Volume VII.] *December, 1892.* [*Number 4.*

POLITICAL SCIENCE QUARTERLY.

A NEW CANON OF TAXATION.

THE object of this essay is to show that every tax has two and only two direct effects, — productiveness and prohibitiveness; that these two effects are mutually exclusive and complementary; that they vary in inverse ratio; and that their sum is the total effect of a tax.

Let me first bound my field. In this study the purpose of a tax has no significance. I deal with revenue, not with expenditure. I note the levying, not the destination of contributions. Nor do I concern myself with the distribution of a tax among individual citizens. My primary interrogation does not pertain either to the justice or to the equality of a tax. I do not inquire whether the citizen should contribute in proportion to ability to pay, in proportion to benefits received or according to natural opportunities. The nature of the authority imposing the tax cuts no figure in the discussion. The classes of effects are the same, whether the contributions be exacted by a government, a bank or a railway corporation. The shifting of taxes is here passed over. I study only those effects that appear with the ultimate incidence.

The word "tax," as I shall use it, applies to any series of contributions authoritatively required of individuals according to some published principle of assessment. In this discussion I shall assume that the administrative machinery is perfect, so that whenever a contribution is legally collectible it is actually collected. Thus the only evasion I shall recognize is the strictly legal evasion. This is a bold assumption, but I cannot avoid making it at this stage of my argument.

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I have bounded my field. I now propose to analyze the real nature of a tax. Every tax that is not an arbitrary seizure of property has a basis, that is, is imposed upon some person, thing, condition or act. The generic term I shall use for these is "phenomenon." We see then that certain orders of phenomena are singled out by the legislator and made the occasion of a contribution. The tax collector knows that wherever and whenever the phenomenon occurs a payment must be exacted. The citizen knows that wherever the phenomenon occurs a payment must be made; for this phenomenon has been selected as the signal for a contribution. What is the relation of the phenomenon to the payment? From the social point of view the need of the treasury is the cause of the contribution, the phenomenon is but the occasion. But from the point of view of the individual citizen, the phenomenon selected as the signal of taxation is the real cause of the tax. His payment is the effect. No phenomenon, no contribution.

Now what results flow from the perception of this causal relation? This depends upon the way in which the citizen views the tax. From the social standpoint the payment of taxes is not an evil, seeing that normally the total benefits of government far outweigh the total burden of supporting it. But from the individual point of view the payment of taxes is an evil, since the benefits each derives from government are only infinitesimally conditioned by his particular contribution. And as the taxpayer is always an individual, there will always be a motive to escape the payment of a tax. Now combine this fact with the one above mentioned. To the citizen the tax is an evil. The cause of this evil is the phenomenon selected as the occasion of a tax. To suppress the cause is to escape the effect. To prevent the phenomenon is to avoid the burden of the tax. Hence, if imported goods are taxed, the individual will have a motive to cease importing. If dogs are taxed, he will be moved to give up his kennel. If liquor selling is taxed, he will have a new inducement to discontinue. If he is taxed as a bachelor, he will have a new motive to marry.

A tax, then, generates motives hostile to the order of phenome-

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non on which it rests. But will the phenomenon actually disappear through dread of the tax? This depends. In the first place the phenomenon may not be under the control of the citizen. A tax on red-haired people would not diminish the proportion of fiery heads. In the second place the phenomenon may be too advantageous. For any phenomenon of such importance, regularity and frequency as to serve as the basis of a tax, owes its existence to a certain surplusage of satisfaction that it yields. Now if the diminution of satisfaction occasioned by the tax more than balances the surplusage due to the phenomenon, the phenomenon will not normally occur. For as the phenomenon brings with it the tax, the final balance is on the side of loss. If, on the other hand, in spite of the tax a margin of advantage still remains, the phenomenon will persist. Which will actually happen in any given case depends upon the nature of the phenomenon and the size of the tax. This much, however, we can say. As phenomena included under the same legal definition are often quite unlike as regards net satisfaction, and as under different circumstances and to different persons phenomena of the same order yield different surpluses of satisfaction, it follows that a tax will suppress some of its underlying phenomena earlier than it will others. It will attack the marginal phenomena. And scarcely any tax will be so light as to suppress none of the taxed phenomena or so heavy as to suppress all.

From the foregoing we can conclude that a tax can have two and only two immediate effects. For the special phenomena singled out as the occasion for contributions must either persist or not persist. In so far as they persist, the effect of the tax is to yield revenue. The tax is to that extent productive. In so far as the phenomena do not persist, the effect is to suppress the phenomena. The tax is to that extent prohibitive. These two effects, then, are shown to be original, co-ordinate and complementary and to exhaust between them all the effects of an impost.

In general, from the productiveness of a tax flow its fiscal consequences, that is, the changes wrought in the condition of

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the treasury; from the prohibitiveness of a tax flow its social consequences, that is, the changes wrought in the condition of society. A tax in which the former quality is the more prominent I shall call a productive, or fiscal, tax. One in which the latter quality is the more prominent I shall call a prohibitive, social, or, as the Germans say, a "socio-political" tax. One in which the two qualities have nearly equal weight I shall call a socio-fiscal tax. Let it be noticed that I use the adjectives "productive" and "prohibitive" in a purely relative sense. In this sense a tax yielding a million may be more productive than one yielding ten millions.

The effect of a purely fiscal tax may be summed up in a word: it brings revenue into the treasury. Of two such taxes the ratio of importance may be shown by the ratio of revenue yielded. There may be, however, one social consequence to such a tax. The tax may either mitigate or intensify the inequalities of wealth existing in society. It may tap the pockets of the poor or the coffers of the rich. In either case the alteration wrought in the distribution of wealth by taxation is strictly limited by the fiscal requirements of the state. Hence in order to increase the social effects of productive taxes, the state must be extended in function and larger revenues must be raised. For this reason, when democracies introduce progressive taxation, there is an ever present motive to widen the activity of the state and to secure by the growing taxes an ever larger disturbance in the distribution of wealth that takes place under free competition.

So much for the productive effects of a tax. Now let us examine the prohibitive effects.

While the fiscal effects of taxes are clear and palpable, their prohibitive working gives rise to numerous obscure and little-regarded phenomena of utmost social importance. Few are the thinkers who perceive how the basis selected for a tax tends to disappear under the unaccustomed weight. Men see clearly what is called into being by a tax, but they are apt to overlook what is crushed out of being. Too often a tax is devised to meet exactly the needs of government, on the assumption that

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the basis of taxation as measured by statistical investigation or estimates will not sink or settle. But somehow or other the impost never yields what was expected and the revenue falls short of public needs. Now this gap that opens between expectation and outcome is due to neglect of the prohibitive workings of a tax. For legislators everywhere rest under the delusion that all the effects of a tax can be secured for the public treasury. As to-day you walk over the floor of Saint Mark's cathedral in Venice you notice that the pavement is all broken into hollows and ridges, the result of the uneven sinking of the foundation piles under the superincumbent weight. Once, doubtless, the floor was laid over even piles, but the architect had not allowed and could not allow for the settling. So is it in finance. Often the nicest adjustment of receipts to expenditures fails to bring a balanced budget because the financier has overlooked the "give" or subsidence of the order of phenomena selected as a basis for compulsory contributions. He has assumed that the only effects of a tax are productive effects. He has ignored the tendency of every tax to crumble away the foundation on which it rests.

Striking illustrations of excessively prohibitive taxes are found in earlier history, especially that of France under the old régime. In one district, says Taine, the king took fifty-six and a half per cent of the farm-product, this accounting for the abandonment of a multitude of domains. In another the peasants begged a philanthropic noble not to roof their cottages with tiles instead of thatch, lest their taxes be increased. In Champagne the inhabitants more than once emptied their wine into the river to escape the duties, in this reminding us of the fellaheen who cut down their date trees to avoid the tax of Mahomet Ali, or of the British peasants who shut light and air out of their cottages in order to escape the hearth-and-window tax. Again we read that the horrors of the *taille* depopulated the rural districts. A turbot taken on the coast paid an entrance duty of eleven times its value; the people of Paris were accordingly compelled to dispense with fish from the sea. In Toul and Verdun the taxes were so onerous that but few consented to

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remain in the town, thus reminding us of the flight of wealthy city residents to the zone of suburbs to escape high urban rates. "Did we dare," says the petition of a little village to the king, "we should undertake to plant slopes with vines; but we are so persecuted by the clerks of the excise that we would rather pull up those already planted." In all these cases the tax, instead of yielding revenue, suppressed the taxed phenomena. Hence Taine happily compares the French fiscal system of that time to a clumsy machine which, while shearing, also flays the victims.

The prohibitive, repressive or penal instruments of political societies form a series, beginning with taxes and passing through all grades of property appropriation, disfranchisement, detention, enforced labor and imprisonment, up to death itself. Hence the nature of a prohibitive tax may perhaps best be grasped if we compare it with a fine. A fine is assessed on a forbidden act by judicial process. A tax is assessed on a permitted act by administrative process. But in operation and effects the two are not distinguishable. Both connect certain payments with certain acts or conditions. Both cause these acts or conditions to disappear. In theory a fine is so fixed as to be absolutely prohibitive. In theory a tax is so fixed as to be absolutely productive. But just as the fine often permits rather than prevents, so the tax often prohibits rather than produces. The prohibitive tax has a place of its own in the regulative system of society. It is a light and humane means of suppressing certain orders of phenomena which are not criminal in themselves, but which are contrary to public policy. Such socio-political taxes are the taxes on state-bank issues, on oleomargarine, on the liquor traffic, on foreign importations, and the proposed taxes on lotteries, option-sales and immigrants.

The prohibitive tax being of the nature of a fine, its immediate consequences must all be negative. It prevents the appearance of some phenomena that would otherwise occur. But on the principle of multiplication of effects, it often happens that the suppression of one order of phenomena causes certain other phenomena to arise. The free-trader calls attention to

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the restriction of our foreign commerce and the falling off in the consumption of foreign goods; the protectionist calls attention to the growth of internal commerce and the increased use of domestic manufactures. The moralist shows how a high license tax thins out the saloons; the cynic points to the increase of home drinking and club tippling. Furthermore, as desire persists even after the phenomena it called forth are taxed out of existence, the new order of phenomena due to the imposing of the tax is likely to resemble the old order; as when the taxation of oleomargarine increases the use of butter. Just here the philosophy of social taxes is greatly misunderstood. Legislators do not see that to close up a certain route to the satisfaction of a desire does not remove the desire. The demand persists and opens up new routes to its satisfaction. Hence social taxes should aim to destroy the demand itself. Where the phenomena provoke the desire they satisfy, like the saloon or the lottery, a prohibitive tax is efficacious.

Assuming a certain truth in the underlying philosophy of *laissez faire*, that is, assuming that the social interest and the algebraic sum of individual interests are in most cases nearly identical, we must regard the total burden imposed by a tax as the sum of its productive and its prohibitive effects. Whether the tax compels us to pay when we do what we would, or prevents us doing what we would — in either case there is a loss. The first loss is balanced by a corresponding gain to the treasury. The second is dead waste. Blindness to the fact of this waste is characteristic of early taxation everywhere. The patient submission to the extraordinarily oppressive and obstructive taxes of former times was probably due to neglect of the negative burden of a tax. People measured the tax solely by what it got out of them. They supposed that they evaded the *taille* by refusing to cultivate, or escaped the duties by declining to import. They did not see that the burden of the tax fell upon them at the very moment when they supposed they were evading it. It has taken nations centuries to learn that a protective tariff is a prohibitive tax. How long will it take to learn that prohibitiveness is a quality characteristic of all the

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older taxes? May not the predilection of modern democracies for direct taxes on property or income indicate that this great truth is getting dimly stamped on the popular consciousness?

How should the statesman regard the prohibitive effects of a tax? The tax with important prohibitive effects is an edged tool that statesmen should not play with. It is true we utterly refuse to subscribe to the old *laissez-faire* doctrine of absolute non-interference. We recognize that governments have both the right and the occasion to initiate and carry out social changes. And for such purposes no instrument is handier than the prohibitive tax. It is capable of delicate adjustments, and it does not place the merely undesirable social phenomena on the same footing with the criminal. But in view of its grievousness and waste we insist that there should be no considerable prohibitive working of a tax except as foreseen and intended by the statesman. Fiscal grounds will not justify a social tax. In a socio-fiscal tax the fiscal reasons can justify only the fiscal effects; social reasons must justify the social effects. Otherwise the tax must be condemned. Though *laissez faire* be rejected, the presumption is still in favor of free enterprise. Those who would limit it must show cause. The statesman who recklessly uses the knife of taxation on the social body in his efforts to tap the hidden veins of wealth, must beware of bringing on a useless and dangerous internal hemorrhage. He is debarred from taxes with non-fiscal effects unless he can show definite socio-political reasons for using them. He must hold to the canon of social economy — a tax for fiscal purposes should have small prohibitive effects.

With these maxims in mind let us address ourselves to the following case. All the socio-political taxes that a people care to maintain have already been imposed. Their fiscal effects have been calculated and allowed for. Still a deficit appears. Additional revenues are necessary. How shall they be secured?

The first question is: Shall the basis of taxation be broad or narrow? The canon of social economy must unhesitatingly pronounce in favor of a broad basis. Remember our task is to minimize the social consequences of our taxes — to impose on society

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a burden that shall bend or deform or twist or misshape or alter the configuration of society as little as possible. How shall this be done? I answer: By broad taxation. The prohibitive effects of a tax appear, we learned, when the basis begins to settle under its weight. Now we know that a house with a very broad foundation may rest solid and firm even upon sand. We know that if the atmospheric pressure of fifteen pounds to the square inch extended to only a hand's breadth of the human body, there would result pain, deformity, disease and perhaps death. But under the same pressure evenly and uniformly distributed over the whole body, development is perfectly normal. Again we know that on the bottom of the deep sea under enormous pressure delicate types of marine fauna develop as freely as pansies in a flower bed. All because the pressure is universal and uniform. From these three striking analogies might we not conclude that the slightest alteration in society is effected when the burden of a tax is so widespread and all-pervasive that it rests with equal weight on all that one can do, all that one can be, all that one can have? We want our revenue taxes to change society as little as possible. When by changing their normal activity individuals incur as much tax as they escape, taxed society may be supposed to differ in the least possible degree from taxless society.

Such is the *a priori* inference. The inference from history is like it. During a large part of this century the policy of civilized states has been greatly influenced by the *laissez-faire* school, with its unlimited confidence in the spontaneous development of trade and industry. Under this influence we might expect taxation to become less and less prohibitive. Now what has been the visible change? Why, in both America and Europe the basis of taxation has been steadily broadened from classes to the whole of society, from species of phenomena to genera, from particular activities to general activities, from special forms of property to all property or income. Our states have worked through to the general property tax. England, with the income tax and the death duties, is strongly tending towards a greater land tax.

How shall we get a broad basis?

This may be secured in two ways: first, by taking a great

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many minor orders of phenomena; second, by taking a few major orders of phenomena. The former is exemplified by the old English customs tariff, which imposed 1400 rates on 1400 different imported articles; the latter, by the tax on such vast groups of homogeneous phenomena as land values, houses, income, property, inheritances, railroad earnings, corporations, *etc.* As between these two methods we must pronounce in favor of the latter. Administrative reasons have long demanded simplicity for the sake of economy. We demand it in the interest of spontaneous social development. It is true the resting of the public burdens on a great many minor orders of phenomena relieves the average pressure on the taxed phenomena and reduces to a minimum the disadvantage of a taxed phenomenon as compared with the untaxed. But at the very moment this marginal inequality is diminished, internal inequalities appear among the taxed orders of phenomena. No one can distribute the weight of a burden evenly over a horse's back by suspending it from a multitude of small cords of unequal length. The most will be slack, and the few will be taut. Likewise no legislator can discover the thousand different rates that will exert equal pressure upon a thousand different commodities. If the rate on mutton be lighter than the rate on beef, a greater proportion of mutton will be consumed than people's palates would have called for if both were untaxed. Thus barley might be favored over wheat; cotton goods over woollen goods; corporate enterprises over individual enterprises; brain capital over farm capital. To escape this unintended interference with free industry and free consumption, it seems better to select for taxation a few universal orders of phenomena. In so far as the phenomena are homogeneous and the rate uniform, the pressure of taxation will be equable, and with respect to these phenomena society will develop with perfect spontaneity. It was for these reasons that in old France Vauban pleaded for his *dîme royale* and the Physiocrats for the *impôt unique.*

Our inquiry thus far has shown that taxation should rest upon a broad basis formed by a few orders of very general phenomena. If we inquire concerning the nature of the phe-

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nomena fitted for fiscal taxation, we answer that they should be stable, *i.e.* phenomena that will persist and bear up under a heavy burden of taxes. A good illustration is the poll tax. Here the citizen himself is the phenomenon taxed, and he cannot be regarded as a very suppressible or sensitive phenomenon. In fact, a tax on citizens as such rests upon the stablest basis imaginable. If, as is often the case, emigration is at the same time prevented, only two modes of escaping the tax present themselves. The citizen may refuse to be born, or, if recklessness in this respect may have brought him within reach of the taxing power, he may commit suicide. Neither measure is frequently resorted to. Aside from justice, therefore, the poll tax is a good fiscal tax. Again, the fact that the hand of death forces every man to relinquish his accumulations at least once furnishes a solid basis for the highly productive succession tax. Beyond a certain limit this tax is evaded by gifts *inter vivos*. But if combined with a tax on gifts, the succession tax is one of the most productive that can be imposed.

These two cases suffice to illustrate what I mean by stable phenomena. Examples of the opposite class are not far to seek. The phenomena of trade and commerce have always been exceedingly sensitive to the burden of a tax. A comparatively light charge on sales, exchanges, transportation, *etc.*, has vast prohibitive effects. Setting the weight of government on the lines of traffic and exchange is like working a horse behind a choking tight collar. Individuals may surrender the benefits of free exchange in order to escape a comparatively trifling tax. Society cannot sacrifice the diffused social benefits of free exchange without being thrown back far toward barbarism. None will ever know the damage and delay done to civilization in Europe by the innumerable transit tolls, *octrois* and tariffs that prevailed until this century. The impatience with which toll roads, bridge tolls and stamp duties have been swept away, together with the later justification of the customs tariff as a social rather than a fiscal tax, shows that the phenomena of trade and traffic are vaguely felt to be unfit for fiscal taxation. These types suffice to indicate roughly the difference between

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stable and unstable phenomena. But we now need a deeper analysis.

The net advantage of every commodity is determined by the difference between the disutility of producing it and the utility of consuming it. When this is broad, the commodity has high resisting power. But under modern conditions this margin is split up into two parts by market value. The difference between cost and value is producers' rent. That between value and utility is consumers' rent. There arise then two cases. Phenomena may be stable, first, because yielding large producers' rent, secondly, because yielding large comsumers' rent. Let us examine the latter case first. The typical phenomena of this class are the necessaries of life. Here the consumers' rent is very large, the phenomena are stable, consumption is inelastic and the prohibitive effects of a moderate tax are very slight. A tax on necessaries of life, then, conforms to the canon of social economy. But because paid by the poor in greater proportion than by the rich such a tax violates the principle of justice. A tax on comforts and ordinary luxuries, on the other hand, being paid by the well-to-do and rich, answers the requirements of justice. But because demands for such commodities is with few exceptions elastic and sensitive, the tax is apt greatly to curtail consumption and thus to waste the consumers' rent of the portion given up. Consumers' rents, therefore, seem to be an undesirable field for exploitation by fiscal taxes. Let us then consider the other order of stable phenomena, *viz.* those yielding large producers' rents.

By virtue of the law of marginal utility large producers' rents are possible only by great differential of advantage or limitation of supply. Hence to tax large producers' rents is to tax monopolies. Monopolies are an inviting field for taxation because of their high resisting ability. Not until the tax has entirely pared away the special profits they yield will they begin to subside under the pressure. Hence up to a certain limit a tax on a monopoly is purely productive. Two cases, however, may be distinguished: First, the monopoly may be taxed absolutely, as a unit; in this case the point where the productive tax suddenly

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becomes prohibitive is fixed and definite. Second, the monopoly may be taxed distributively, according to product. In this case the tax will be purely productive until it appropriates all the producers' rent on the marginal portion of the product. Then prohibitive effects will set in and will increase with every increment in the tax rate until the business finally disappears.

Few will have the hardihood to assert that monopoly taxes violate the principle of justice. While the tax on large consumers' rents falls upon property, the tax on large producers' rents falls upon riches, and particularly upon riches heaped up not by superior industry or self-denial, but by privileges, special opportunities and the stand-and-deliver maxims of the highwayman. As monopoly is profitable because of its power to tax the people, a monopoly tax is really but the people taking back their own. It is not an enforced contribution, but a recovery of stolen property. As monopolies are the source of many dangers that menace free institutions, a tax that will cut deep into these unearned profits is at once both fiscal and social. While filling the treasury on the one hand, on the other it brings in its train a series of beneficent social consequences of the highest importance.

To summarize, I will state the following propositions which, I believe, have been established by my reasoning:

1. Every regularly enforced tax either produces or prohibits.
2. Though obscure and hitherto little regarded, the prohibitive effects of taxation are of the highest social importance.
3. Taxation for purposes of revenue should rest on a broad basis formed by a few orders of highly general phenomena.
4. These orders of phenomena should be stable and hence should include monopolized goods, the stablest orders of industrial phenomena.

In closing, I propose that the following proposition be accepted as the canon of social economy, co-ordinate and complementary to that of administrative economy laid down by Adam Smith: *A tax for purposes of revenue should have the least possible prohibitive effect.*

EDWARD ALSWORTH ROSS.

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RAILWAY ACCOUNTING.

THE East & West Railway is a supposititious road in the United States east of the Missouri river. Having no actual existence, its supposed records can, without invidious comparisons, be made the text for a brief paper upon the meaning of railway statistics and the relation of one item to another in such tables as are usually printed in railway annual reports.

Although paying four per cent dividends, it is assumed that the stock of the East & West Railway is not quoted at very high prices on the exchanges. A company which is really earning four per cent and which seems likely to continue earning and paying that dividend, usually finds its stock well thought of in Wall Street. Contrary to this rule, a holder of East & West shares sees his stock declining under daily sales. Naturally his interest is aroused; he asks himself why the prices of his shares should fall; in search of information which should satisfy his questionings he first takes up the annual report of his railway and looks over the figures given therein. On the first pages he finds an income account for the last fiscal year, containing nothing which on the face of it could be construed unfavorably. This statement of the results of the year is as follows:

EAST & WEST RAILWAY: INCOME ACCOUNT.

Gross earnings:	passenger		$1,080,000
	freight		5,600,000
	mail and express		120,000
	Total		$6,800,000
Operating expenses (62 per cent)			4,200,000
Net earnings			$2,600,000
Add interest on bonds owned			250,000
Gross income			$2,850,000
Fixed charges:	taxes	$ 100,000	
	bond interest	1,250,000	1,350,000
Net income			$1,500,000
Dividends at 4 per cent			1,200,000
Surplus for the year, carried to profit and loss			$ 300,000

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On succeeding pages of the annual report are given the results for the year of the Fertile Valley Railroad, a branch or feeding line, owned by the East & West Company, but operated independently:

Gross earnings	$1,500,000
Operating expenses	1,400,000
Net earnings	$ 100,000
Guaranteed bond interest paid	700,000
Deficit for year	$ 600,000

There is nothing unusual or which necessarily shows bad management, in the fact that a "feeder" is not self-supporting. The Fertile Valley, as its name implies, may be a line running through a rich agricultural and manufacturing district, the greater part of whose traffic is carried by the parent road to the great markets. Were it not for this branch, the traffic would seek a rival road. Hence in this case the profits resulting from the carriage of this extra business are worth to the East & West Railway a great deal more than the $600,000 which it loses through its guaranty of Fertile Valley bonds. The policy of building or purchasing branch lines which are run at a loss may of course be carried to such an extreme as to involve the guaranteeing company; particularly when the real effect of such annual losses is concealed by the method of book-keeping adopted in this case. Clearly the East & West Company must pay this deficit of $600,000; but from what fund? Since the gross and net earnings of the main line receive all the benefit of the traffic turned over to it by the branch, and since, as we have assumed, this benefit is great, it follows that the cost of procuring that extra traffic is a proper charge against the income helped thereby. In other words, the annual loss of $600,000 on the branch line ought to be deducted from the gross income of the East & West Railway before a dividend is declared. If this is not done, — and a glance back at the income account presented shows no mention of the item, — the real and honest earning power of the company is to that extent overstated and the dividend unjustifiable.

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How then is the deficit on the Fertile Valley branch carried? To answer this question, the general balance sheets for two years must be examined. These general balances show on the one side the assets of the company, and on the other the liabilities. The different amounts are stated at their face and not at their intrinsic values. It is ordinarily useless labor to go through the general balances for the sake of getting at the actual worth of the properties. Generally speaking, the plant of a railway is worth to the stockholders only what it is capable of earning as a carrier of traffic. The great cost of the roadway and track could never be realized at forced sale for any other business. Hence for the information of ordinary shareholders the most important object in having general balance accounts is the opportunity afforded for annual comparison. If we note the changes in the items from one year to another, we can often get valuable information about the real prosperity of the company, because the facts thus revealed may not be mentioned in the text of the annual report. First, then, should be stated the balance sheets for two years:

EAST & WEST RAILWAY.

General Balance Sheet, June 30, first year.

Assets.		*Liabilities.*	
Cost of road	$45,000,000	Capital stock	$30,000,000
Cost of equipment	10,000,000	Funded debt (5 per cent)	25,000,000
Stocks owned, Fertile Valley	1,000,000	Interest accrued	500,000
Five per cent bonds of Fertile Valley branch owned	5,000,000	Due to connecting roads	600,000
Advances to Fertile Valley	400,000	Due for wages	500,000
Due from connecting roads	250,000	Profit and loss	5,500,000
Materials on hand	200,000		
Cash on hand	250,000		
	$62,100,000		$62,100,000

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General Balance Sheet, June 30, succeeding year.

Cost of road	$48,000,000	Capital stock	$30,000,000
Cost of equipment . .	11,000,000	Debt (5 per cent) . .	28,000,000
Stocks owned, Fertile Valley branch . . .	1,000,000	Interest	700,000
Bonds owned, Fertile Valley branch . . .	5,000,000	Due to connecting roads	1,000,000
Advances to Fertile Valley	1,000,000	Due for wages	700,000
Due from connecting roads	200,000	Unadjusted accounts . .	300,000
Materials on hand . .	150,000	Profit and Loss . . .	5,800,000
Cash on hand	150,000		
	$66,500,000		$66,500,000

A brief explanation of the items may first be desirable. The costs of road and equipment are approximate statements of the amount of money spent for these objects, though they contain items which are only indirectly a charge against cost. For example, in these balance sheets will be noticed an increase of bonds from $25,000,000 to $28,000,000 during the year. If these bonds were sold at a discount, say ten per cent, the amount so deducted from their face value, $300,000, would not represent money put into the road directly and physically, though the whole increase, $3,000,000, it will be noticed, is added to cost of road in the balance sheets. This is proper, because that discount represents the cost of the road in another way, *i.e.* in its lack of credit. Interest accrued but not due should always be put down as a liability, otherwise large profits would be the result at one time and large deficits at another, according as bond interest became payable. In all railroad balance sheets there are found items in current account due from and due to connecting roads; these, with wages not yet distributed, materials or supplies on hand and cash in treasury, constitute the floating debits and credits for which every large business must provide working capital. The item profit and loss has misled many. If the assets foot up more than the liabilities (and every road tries to have it so, even as a matter of book-keeping, for appearance's sake) the item appears on the lia-

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bility side of the account. It will thus be seen to be what it really is, merely the balance between the assets and liabilities representing the supposed excess of property over the capitalization and debts. It is not money in hand. It usually covers former annual surpluses which were long ago spent for equipment or on the road, or invested in the materials carried in the storehouses and not yet put into the property. If a road has cash or salable securities in unusual measure, these will be found on the opposite side of the account as assets; though to see things as they are, all floating debts should be added together and balanced against *available* cash assets. This will give the position of the company's treasury at the time, whether really short of ready money or not.

The array of figures in the general balance sheets looks a little bewildering; so to make the matter clearer we will tabulate the changes during the year:

Expenditures.

Increase in cost of road	$3,000,000
" " cost of equipment	1,000,000
" " advances to Fertile Valley	600,000
	$4,600,000

Resources.

Decrease in amounts due from connecting roads	$ 50,000
" " material on hand	50,000
" " cash on hand	100,000
Increase in funded debt	3,000,000
" " interest due	200,000
" " amounts due to connecting roads	400,000
" " wages due	200,000
" " unadjusted accounts	300,000
" " profit and loss	300,000
	$4,600,000

This summary of changes in the position of the company during the year is worth study. The words "expenditures" and "resources" are used in their book-keeping sense: a decrease in the amount due *from* other roads and an increase in the amount due *to* other roads being both alike resources for

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our present purpose. The statement shows an increase in investment in road and equipment amounting to $4,000,000, of which more hereafter. The deficit of the Fertile Valley branch is seen to have been carried in the accounts also as an increase in value of plant, offset on the other side of the account by money newly borrowed. We know that this is not a correct principle and that the value of the property has not been advanced a penny through the Fertile Valley, since all the profit of the branch for the year has already been included in East & West earnings. This method of disposing of branch line losses in the accounts is resorted to mainly to allow of borrowing money to meet the deficiency. Carrying subsidiary losses as assets and borrowing money or issuing bonds therefor, has become a common practice. The combination of many small roads into a large system permits such accounting, if the managers are so disposed, without danger of detection by superficial examination. Sometimes this way of concealing deficits is practised for a year or two during hard times, the officers intending to apply the surplus revenues of succeeding prosperous years toward wiping out all these imaginary assets and the debts contracted to pay for them. Of course it is also proper to treat in this way a genuine loan when repayment is reasonably certain. The balance sheets further show that the only bonds owned by the East & West Railway are those of the Fertile Valley branch. A glance at the Income Account shows $250,000 received from this source. It thus appears that in order to show that dividends had been earned, the directors of the East & West Company did not charge up the losses of the Fertile Valley branch as they should have done, but did take credit for $250,000 unearned interest on their own guaranteed bonds.

We begin now to grow suspicious and to scrutinize the items more closely. The expenditures in the table of general balances show $3,000,000 spent upon the road and $1,000,000 upon the equipment during the year. $3,000,000 was raised from the sale of bonds and the remaining $1,600,000 (including Fertile Valley loss) was gathered by piecemeal. Debts due to the company were more closely collected and on debts due by the

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company, it will be seen, payments were deferred. Wages are running in arrears; $200,000 of bonded interest was not paid, and a new item, "unadjusted accounts" (which in this case means only another floating debt), is found. Everything has been pinched to raise money; the table of changes does not bear a favorable aspect, but the purpose of the management has been accomplished, namely, not to increase the funded debt to the full amount demanded, $4,600,000. Reliance is put on the fact that stockholders look at the amount of bonds out, but do not often figure through the accounts. Now, as to the $4,000,000 increase in cost of road and equipment, we have a construction account, which for clearness is here divided (as genuine annual reports are *not*) into just and unjust charges to capital.

Construction Account, 1891.	*Charged to Capital*	
	Properly	*Improperly*
Road for new rails	$ 400,000	
for damages from wrecks by accidents		$350,000
for renewals of ties		150,000
for double track	1,100,000	
for new bridges	100,000	
for real estate bought	750,000	
for new stations	150,000	
Total charged to road, $3,000,000.		
Equipment for 15 replaced engines		150,000
for 15 new engines	150,000	
for 500 replaced freight cars		250,000
for 500 new freight cars	250,000	
for 25 replaced passenger coaches		100,000
for 25 new passenger coaches	100,000	
Total equipment, $1,000,000.		
	$3,000,000	$1,000,000

Every active concern must in some shape keep a depreciation account, to which shall be charged certain sums for renewal of machinery, *etc.*, before profits are divided. If this is not done, the company will at the end find itself without plant and without money. In railway matters this is best accomplished simply by replacing cars and locomotives as they become worn out and charging directly to operating expenses the cost of such new

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cars as do not add to the number of cars in use. In this way the quantity and quality of equipment or buildings or track are kept up at the expense of the annual earnings. In the construction account just given $1,000,000 is improperly charged to capital and paid for by bonds, because the items cover depreciation and should have been paid for from operating expenses. This amount, added to the $600,000 loss on the branch line, makes $1,600,000 as the amount which the report fails to add to expenses. As the sum applicable to dividends in the income account was but $1,500,000, we reach the conclusion that the dividend was not really earned and should not have been declared.

It will be remembered that the road was operated for 62 per cent. The percentage of expenses to earnings, made much of by some, is of little use except as a guide for further examination. Of itself it is only the percentage relation between two sets of independent figures. If a railway earns one dollar and spends fifty cents, it is operated for 50 per cent; but if from any cause — water competition, let us say — it can get but seventy-five cents for the same unit of service, and if its expenses per unit stay at fifty cents, then it is operated for 66⅔ per cent. Usually the volume of units of traffic increases as the charge per unit falls, so that the road makes as much gross profit from the larger as from the smaller receipts per unit; but manifestly we must go into the details of the operating expenses if we would form a judgment upon the management. Here are four statistical tables of the East & West Railway:

Operating Expenses.

Maintenance of way and structures		$420,000
Maintenance of equipment:		
passenger cars	$100,000	
freight cars	300,000	
engines	60,000	460,000
Conducting transportation		2,320,000
General expenses		1,000,000
Total		$4,200,000

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Statistics of Operation.

Miles of railway operated, 800.	
Passenger train mileage	1,800,000
Freight train mileage	3,200,000
Switching, *etc.*, mileage	1,000,000
Total engine mileage	6,000,000
Number of passengers	800,000
" " 1 mile	36,000,000
Tons of freight	3,000,000
" " " 1 mile	700,000,000
Rate of fare per mile, in cents	.03
Rate of freight per ton per mile, in cents	.008
Mileage of passenger and baggage cars	9,000,000
Mileage of freight cars	96,000,000

Statement of Equipment.

Number of engines	200
" " passenger cars	400
" " freight cars	30,000

General Items.

Maintenance of way per mile		$525
Average number of passengers to each train		20
Average number of tons to each freight train		220
Number of passenger cars to each train		5
Number of freight cars to each train		30
Average mileage of each freight car per day		10
Average earnings per mile:		
each passenger train		$0.60
each freight train		1.75
Cost of motive power, per engine mile:		
repairs of engines	$0.01	
fuel	.05	
engineers and firemen	.07	
oil and waste	.01	$0.14

Space forbids consideration of all these items. The amount allowed for maintenance of way and structures per mile is too small. On many railroads the average annual cost of necessary

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repairs and renewals is $500 on each passenger coach, $40 each for freight cars and $1000 each for engines. Multiplying these sums into the list of equipment given above, we find that there should be an addition of over a million dollars to the sum allowed in the operating expenses for repairs and replacement of equipment. This of course would increase the total expenses by that amount and correspondingly decrease the net income. As we know that the East & West Railway (or any railway) cannot long be run without making the repairs and renewals its neighbors find necessary, we are forced to the conclusion that if money enough to care rightly for the property had been expended and charged to current working expenses, the fixed charges might not have been earned. Bankruptcy therefore awaits the company, unless heroic measures are taken to remedy defects in management and save the property. The decline in the market prices of the stock was warranted. Our inquiring stockholder would do well to dispose of his holdings at once at whatever price he can get; unless his ownership is so large and his knowledge of railway operation so good as to enable him to ascertain and himself apply the proper remedy.

Let us carry our study a little further. The cost of fuel is low; the cost of motive power per mile is also low; two points much in favor of the company. The rate received per ton per mile is not as high as friends of the road would like to see it, and perhaps a careful examination of the commercial conditions in the country through which the road runs would show where improvement is possible. At that low average rate the volume of business ought to be greater, for these two things are related to each other. There is some defective management at this point. The passenger department is grossly mismanaged. So many trains are run that the average number of passengers is only twenty per train mile. The average for the whole United States is about forty-five, and to carry less than forty passengers per average train mile is hardly profitable. Trains should at once be withdrawn until only the reasonable demands of the public are met. Since only half the present number of passenger cars is really needed, it was a gross abuse of power

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for the management to purchase more coaches, as the construction account shows they did. There is no particular fault to be found with the lading of the average freight train or with the earnings per freight train mile; they are up to the average, if not beyond it. But to what use so many freight cars can be put is a mystery. It appears that the average mileage of the freight cars is but ten miles per day; it should be more than three times that to be profitable. Very likely more than half of the large number of cars owned (large in proportion to traffic carried) are standing idle on side tracks. The construction account showed 1000 cars bought, at an expense of $500,000. Not a single car should have been added to the list, since under good management one-third the number already owned could carry the stated volume of business. The extra number of cars should be reduced or loaned out to other roads, to be paid for at three-fourths of a cent per mile run. There has been gross mismanagement in this department also, locking up needed capital in unnecessary equipment, which, when bought, must be kept in repair, though perhaps falling to pieces from lack of use. The million dollars spent for double track could also be criticised. The amount allotted to general expenses on a road carrying a fair amount of traffic should be not much over ten per cent of the total expenses. Judged by this test the East & West managers are paying to themselves or wasting about $500,000 a year. In short, the directors of this company either are "working" the road for their own benefit, or are culpably negligent of their duties as trustees for the stockholders. The affairs of the company look desperate, but the first requisite is to turn out the present board of directors and officers, and substitute for them capable and honest men. A new administration may save the company from bankruptcy; at any rate it is the only chance.

Let us suppose that after these facts are generally known, new directors are elected, who in turn intrust the management to experienced railroad men. Of course the payment of dividends is suspended and all energies are devoted to saving the property from foreclosure. In such large affairs, all that is

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wrong cannot be righted at once. Corporate salvation is a work of time. In the present case we will assume that two or three years' hard work has had its results and that the income of the road is now meeting in full all proper operating expenses and fixed changes. Under these conditions the income account would be as follows:

Gross earnings: passenger		$2,000,000
freight		7,000,000
mail, express and miscellaneous		600,000
Total earnings		$9,600,000
Operating expenses (70 per cent)		6,720,000
Total income		$2,880,000
Fixed charges: taxes	$ 150,000	
bond interest	1,400,000	1,550,000
		$1,330,000
Deduct loss on Fertile Valley bonds outstanding	350,000	
amounts set aside to pay old floating debts	350,000	700,000
Surplus for year, devoted to improvements and betterments		$630,000

This is very satisfactory. Passenger earnings have increased by the judicious issue of commutation and excursion tickets, though the fare received on the average has fallen from three cents to two cents per mile. The rate formerly received for freight was too low for the quantity carried. In the intervening years the new officers have increased the volume of traffic. Taxes and bond interest have increased, and the losses on the Fertile Valley branch are now properly charged. Evidently also the new management has adopted the policy of paying off old debts by degrees, $350,000 being set aside for that purpose. There still remains $630,000, which is to be spent for improvements on the property. Altogether there is a fair prospect of resuming dividends, so that those who purchased the stock when at its lowest point will very likely make large profits.

For the sake of contrast, the details of the operating expenses are given:

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Maintenance of way		$1,000,000
Maintenance of equipment:		
350 passenger cars at $500	$175,000	
15,000 freight cars at $50	750,000	
200 engines at $1,000	200,000	1,125,000
Conducting transportation		4,095,000
General expenses		500,000
		$6,720,000

A generous amount is allowed for maintenance: when the plant is once in excellent condition, it can be maintained at a less cost than that given. The expense for trains earning revenue (this phrase excludes switching mileage and the like) is about ninety cents per train mile. In actual operation, this expense runs from eighty cents to one dollar or more per mile run, varying according to conditions, particularly the relative cheapness or dearness of coal, which forms a large item in all railroad expenses. As we have assumed that the East & West Railway obtains its fuel cheaply, the ninety-cent cost per train mile is fair, indicating reasonably high expenses for improving the property if the management is good, or a waste of money if the management is bad. Under the old state of affairs on this railway, the expense per train mile was about eighty cents. Our examination of details has shown that this old show of cheapness was deceptive. Whether the new cost of ninety cents per train mile is due to a generous care of the property or to greater waste, can be told only by further careful scrutiny into the accounts. As far as they go, the details of operation under the new management just given indicate a conservative policy on the part of directors and officers, and justify a hopeful view of the future.

The management of American railroads is better than it used to be — better as to operation and more scrupulously exact as to the accounts. Nevertheless, while some railways furnish model specimens of book-keeping in their reports, others, weighed down in some cases by traditional policy in their accounting, publish statements of their finances which are misleading. We cannot in all these latter cases charge actual fraud. For exam-

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ple, the practice of carrying branch line losses as assets, wrong as the policy seems when stated in those words, nevertheless can in some cases be justified from a book-keeper's standpoint. Yet it is clear that a railway company might continue to call such deficiencies "investments in subsidiary roads," and continue to issue bonds to cover the actual cash required, until at last a poor year might not yield earnings enough to pay interest on the overloaded debt. If at the same time, owing to the state of the money market and the spreading knowledge of the road's real condition, no one would lend it any more money, a crisis would be impending, with a certain loss to the holder of the company's bonds and perhaps an assessment upon the stock. It has been assumed that the Fertile Valley, though not itself earning interest, was valuable to the East & West because of the interchanged traffic. In some cases these branch lines may not be worth much to the parent road, and may, indeed, have been "unloaded" on the old road by unscrupulous insiders. In judging of such cases, the ordinary stockholder must rely upon the character of the men in control. Full knowledge of such details is not usually possible to him.

But while every particular concerning a road cannot be and need not be known, it has been the purpose of this paper to show that any one with a fair knowledge of railroad operations can find out for himself the broad facts concerning any company, provided sufficient details are given in the annual reports and provided he will take the trouble to examine them closely. It is a mistake to suppose that nothing can be ascertained from the annual reports of railroads; the main facts can be. It is sometimes thought that the figures can be manipulated and so made worse than useless; but this is true only to an unimportant extent. The items are interdependent in a way often unsuspected. For example, if bonds have been issued, some item on the other side of the general balance sheet must be increased also. This item of assets, if given in detail in the report, as it should be, can be examined to see whether any unjustifiable charge to capital has been made in order to produce a good showing for dividends. This good showing may also

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be made by cutting down operating expenses; but here again a look at the tables of items will show whether roadbed or equipment has been unduly neglected. In forming a judgment in such cases, the proper comparison is not with the average of the whole country or section, but with some road that closely resembles, in the nature of its traffic and in physical and geographical conditions, the railway under examination. Moreover, the question whether a road has ready cash enough to meet the requirements of the immediate future is often important, — especially so in times like the present, when credits are closely scanned by large lenders. A little study of the general balance sheet and of bond and similar tables, will throw valuable light upon such a question.

In order that the general facts regarding a railway's operation and financial management may be open to investigation, public opinion should require that the annual reports of all railways should contain statements in detail of every item of income and expense, including statistics of trains. By following and comparing these statistics from year to year and studying them in connection with the statements of similar railroads, an investor or stockholder, after the manner herein set forth, can form a fair judgment as to the value of the company's bonds or stock.

THOMAS L. GREENE.

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THE ORIGIN AND DEVELOPMENT OF WRITTEN CONSTITUTIONS.

A CONSTITUTION is the fundamental law according to which the government of a state is organized, and agreeably to which the relations of individuals or moral persons to the community are determined. It may be a written instrument, — a precise text or series of texts, enacted at a given time by a sovereign power, — or it may be the more or less definite result of a series of legislative enactments, ordinances, judicial decisions, precedents and customs, of diverse origin and of unequal value and importance. Most existing free constitutions are of the first-mentioned type. To the second class belongs the English constitution — the one from which all others are in some degree descended. As the private law of the United Kingdom is not embodied in a code, so the rules of its government are not written. A Parliamentary vote, a decision of a court, may result in an extension or in a curtailment of these rules. The British constitution is a barrier which yields under the pressure of circumstances as often as that pressure reaches a certain degree of intensity, but a barrier which never breaks, being steady and firm despite, or rather on account of, its flexibility. Such a system, in which custom and tradition compete with legislation and not infrequently take the precedence, is eminently favorable to a mixed form of government. It is the one which circumstances produced in ancient Rome and which Cicero admired so much. In modern Europe the old régime knew no other. But since the end of the last century it has been superseded in most civilized countries. The democracy of modern times gave birth to written constitutions; and such has been the fortune of the new system thus inaugurated, that during this century almost all the states that gave up absolutism have been led to adopt it.

The design of the present article is not to compare what may be called the old and the modern forms of constitution, pointing

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out defects and advantages, but simply to show, from the historical point of view, how the written form was selected and developed first in America, then in France and finally in the rest of continental Europe.

I.

The men who are to be remembered as the founders of the modern system of written constitutions are the Puritans of the seventeenth century in England and in America. This has been proved by recent studies, published almost simultaneously in the POLITICAL SCIENCE QUARTERLY and in the Paris *Annales de l'École Libre des Sciences Politiques.*[1] The Agreement of the People, drawn up by Cromwell's soldiers (1647), the Instrument of Government of the Protectorate (1653), and farther back, before the Puritan revolution, the Fundamental Orders of Connecticut (1639), together with the well-known Plantation Covenants, subscribed by the early non-conformists as they settled on American soil, are the documents to which may be traced the origin of written constitutions. How the Independents based both religious and political society on an original compact, need not be insisted upon here. It has been fully discussed in the monographs above referred to, and later in a very interesting contribution to this magazine by Mr. D. G. Ritchie.[2] During the eighteenth century the ideas of natural right and compact received a new impulse. Locke, who imbibed from his Puritan masters the principles of Independency, first at the school of Westminster, then as a student at Oxford, had developed the theory of social contract in his *Essay on Civil Government.* It was soon to become one of the favorite subjects of philosophical dissertation. The New England clergy could draw it easily from the writings of the

[1] See Professor H. L. Osgood, The Political Ideas of the Puritans, POLITICAL SCIENCE QUARTERLY, VI, 1, 201 (March and June, 1891); Charles Borgeaud, Premiers Programmes de la Démocratie Moderne en Angleterre, 1647–1649, and Premières Constitutions de la Démocratie Américaine, *Annales* of April 15, 1890, and January 15, 1891.

[2] The Social Contract Theory, POLITICAL SCIENCE QUARTERLY, VI, 656 (December, 1891).

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fathers of congregationalism, John Cotton, Thomas Hooker, Richard Mather. They also began to systematize and comment upon the origins of government. As far back as 1710 and 1717, John Wise, pastor of a church in Ipswich, Massachusetts, published his then celebrated tracts: *The Churches Quarrel Espoused* and *A Vindication of the Government of New England Churches.* Ecclesiastical controversy had put the pen into the author's hand; but he could not help entering the field of political speculation. In the second of these treatises he expounded in the following manner his conception of the genesis of a state:

> Let us conceive in our mind a multitude of men, all naturally free and equal, going about voluntarily to erect themselves into a new commonwealth. Now their condition being such, to bring themselves into a political body they must needs enter into divers covenants.
>
> 1. They must interchangeably each man covenant to joyn in one lasting society, that they may be capable to concert the measures of their safety by a publick vote.
>
> 2. A vote or decree must then nextly pass to set up some particular species of government over them. And if they are joyned in their first compact upon absolute terms to stand to the decision of the first vote concerning the species of government, then all are bound by the majority to acquiesce in that particular form thereby settled, though their own private opinion incline them to some other model.
>
> 3. After a decree has specified the particular form of government, then there will be need of a new covenant, whereby those on whom sovereignty is conferred engage to take care of the common peace and welfare, and the subjects on the other hand, to yield them faithful obedience.[1]

John Wise's work was reprinted twice at Boston in 1772. More than once Congregationalist preachers gathered from it arguments and illustrations for their sermons, as political speakers and publicists took from Locke's writings the subject-matter of their addresses and pamphlets. On the eve of the great struggle for independence, the principle that all men

[1] A Vindication of the Government of New England Churches, drawn from Antiquity, the Light of Nature, Holy Scripture, its Noble Nature, and from the Dignity Divine Providence has put upon it (Boston, 1772), p. 30.

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were equal under the law of nature, and that states were based, either historically or logically, on the social compact, filled the minds of the New England patriots. It was the fundamental dogma of their political creed. The Revolution caused it to spread through the other colonies. Non-conformists received it from the pulpit, Anglicans and Catholics from the tribune.

On the 20th of November, 1772, James Otis, the lawyer who, eleven years before, in his famous speech on the Writs of Assistance, had thrown down the gauntlet to the government of George III, and Samuel Adams, "the last of the Puritans," laid before the Boston town meeting in Faneuil Hall the first of the American Declarations of Rights. It began thus:

NATURAL RIGHTS OF THE COLONISTS AS MEN.

Among the natural rights of the Colonists are these: First, a right to life; Secondly, to liberty; Thirdly, to property; together with the right to support and defend them in the best manner they can. These are evident branches of, rather than deductions from, the duty of self-preservation, commonly called the first law of nature.

All men have a right to remain in a state of nature as long as they please; and in case of intolerable oppression, civil or religious, to leave the society they belong to and enter into another.

When men enter into society, it is by voluntary consent; and they have a right to demand and insist upon the performance of such conditions and previous limitations as form an equitable *original compact*.[1]

The men to whom, immediately before and after the Declaration of Independence, fell the task of organizing the emancipated colonies as free commonwealths, had their eyes fixed upon New England. Her representatives in the Congress at Philadelphia were eagerly listened to by all who had this duty to perform. The most influential of these advisers was John Adams, to whose exertions mainly was due the important resolution adopted by Congress May 10 and 15, 1776:

Whereas, his Britannic Majesty, in conjunction with the Lords and Commons of Great Britain, has, by a late act of Parliament, excluded the

[1] See Wells, The Life and Public Services of Samuel Adams (Boston, 1886), I, 502.

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inhabitants of these united colonies from the protection of his crown . . . and it is necessary that the exercise of every kind of authority under the said crown should be totally suppressed and all the powers of government exerted under the authority of the people of the colonies . . . therefore,

Resolved: That it be recommended to the several Assemblies and Conventions of the united colonies, where no government sufficient to the exigencies of their affairs hath hitherto been established, to adopt such a form of government as shall, in the opinion of the representatives of the people, best conduce to the happiness and safety of their constituents in particular and America in general.

In this resolution the framing of written constitutions was not expressly called for, but such a course of action corresponded well to the views of both those who passed the resolution and those who were entrusted with its execution. Their conception of the state as founded on an explicit contract between individuals, the remembrance of the political covenants made by the early Puritan colonists, the example of the charters under which the government of several colonies had been framed, the necessity of legislating under the authority of the people — all concurred in bringing again to the front for further development the scheme which had already been thought out in both the old and the new country by the fathers of Anglo-Saxon democracy.

Even before the May resolve had been submitted for discussion, some commonwealths, upon their individual application to Congress for direction, had been advised to call representative assemblies "to establish such a form of government as would best promote the happiness of the people." From this resulted the provisional constitutions of New Hampshire (January, 1776) and South Carolina (March, 1776). The May resolve was the signal for more general action, and elaborate constitutions were soon framed in most of the colonies. On the 12th of June, the Virginian Assembly, at Williamsburg, adopted the famous Bill of Rights, which served more or less as the model for all others. A few days later, on the 28th, the constitution, which was to remain unaltered until 1830, was adopted. Like action was taken by New Jersey, July 2; Delaware, September 21; Penn-

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sylvania, September 28; Maryland, November 8; and North Carolina, December 18. Rhode Island and Connecticut simply confirmed their ancient democratic charters, substituting for the name of the king that of the people. Georgia adopted her first constitution on February 5, 1777, and New York April 20, of the same year.

Massachusetts had to wait until 1780 before an end could be put to her provisional government. But her constitution was considered to be the most perfect expression of the American system as it was at the close of the Revolution. On the proposal of John Adams, who had drafted the plan, it was reported by a committee consisting of the two Adamses and President Bowdoin. The project was then discussed by a convention and submitted to the vote of the people. That remarkable instrument, which served as a pattern for the convention which in 1787 framed the federal constitution, and later for the assemblies which remodelled the original state constitutions, is still, after several revisions, the fundamental charter of the commonwealth of Massachusetts. It marks a starting-point in the history of modern public law, while the document itself shows a high degree of excellence. The preamble reminds us of a page of the *Contrat Social:*

> The end of the institution, maintenance and administration of government is to secure the existence of the body politic, to protect it and to furnish the individuals who compose it with the power of enjoying in safety and tranquillity their natural rights and the blessings of life: and whenever these great objects are not obtained, the people have a right to alter the government and to take measures necessary for their safety, prosperity and happiness.
>
> The body politic is formed by a voluntary association of individuals. It is a social compact, by which the whole people covenants with each citizen, and each citizen with the whole people, that all shall be governed by certain laws for the common good. It is the duty of the people, therefore, in framing a constitution of government, to provide for an equitable mode of making laws, as well as for an impartial interpretation and a faithful execution of them: that every man may, at all times, find his security in them.
>
> We, therefore, the people of Massachusetts, acknowledging, with grateful hearts, the goodness of the Great Legislator of the Universe, in

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affording us, in the course of his providence, an opportunity, deliberately and peaceably, without fraud, violence or surprise, of entering into an original explicit and solemn compact with each other — and of forming a new constitution of civil government for ourselves and posterity : — and devoutly imploring his direction in so interesting a design, do agree upon, ordain and establish the following declaration of rights and frame of government, as the Constitution of the Commonwealth of Massachusetts.

One would imagine himself in this to be reading Jean Jacques. Yet it was not mainly from Rousseau, but farther back, from Wise and Locke, that the Massachusetts legislators gathered their inspiration. In this their confession of political faith may be found the real sense they gave to the famous theory of social contract.[1] The project of the committee, having been deliberated upon and adopted in the convention by a majority of votes, was submitted to the people in their town meetings and ratified also by a majority of the citizens. It was not, therefore, in spite of the letter of the text itself, a contract between individuals, but indeed a fundamental "law," enacted by the people and set by themselves at the foundation of their government, to be the supreme rule of the three powers which make, interpret and execute "the laws."

II.

Immediately after the report of the committee of the Massachusetts constitutional convention had been issued, John Adams sailed for Europe. Sent for the second time on a mission to Louis XVI, he started on the 13th of November, 1779, taking

[1] The thesis of the Genevan philosopher is usually refuted by saying that no state ever originated in contract — that society is for mankind the state of nature, as is the swarm in the case of bees. War is thus waged upon the "sophist" in the name of history and common sense. If instead of interpreting the much-disputed theory as if it related to the actual process of the formation of society, — an interpretation which does not necessarily follow from Rousseau's argument, — one takes it as a pure philosophical hypothesis, helping to explain the reciprocal position of independent members of a free state, no doubt it will be appreciated differently. This is most probably the meaning which the author of the *Contrat Social* intended to attach to it and, at any rate, this is the way the principal framers of the Massachusetts constitution understood it.

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with him a printed copy of the project he had planned for his countrymen. Franklin, who had been in France since 1776 and had succeeded Voltaire to the first place in popular favor, was already occupying the minds of the philosophers with his own work, the constitution of Pennsylvania. John Adams's new scheme was soon to become also a subject of speculation. In 1783 Franklin published a French annotated edition of the constitutions of the thirteen states.[1] At once it was widely circulated, providing favorite themes for discussion everywhere, in the *salons*, in the clubs, at the court, in town, in the provinces. Enthusiasm for American liberty was carrying away Paris and the whole kingdom. Having supported the Congress with the power of her arms, France considered herself the godmother of the new republic. She was proud of her protégé; and as the principles proclaimed in the United States corresponded with the aspirations which the experience of the last reigns and the progress of philosophy were rousing within herself, she eagerly applauded the new political formulas. The English system of a liberty wrought out by the evolution of traditional law obtained some approval among the privileged classes. Upon this, however, the aristocracy was divided, and the most active among the young men joined La Fayette, Noailles, Lameth and their associates of the War of Independence, and were called "the Americans." Public opinion decided against England and the English system. In 1787 came the draft of the federal constitution, furnishing a new subject for discussion by philosophers and by the public in general. Frenchmen were already more jealous of public liberties than the Philadelphia convention. They were troubled because a declaration of the rights of man was not to be found in the project drawn up by that body.[2]

After this one naturally wonders that American ideas did not have a great influence over the compilers of the *cahiers* of 1789.

[1] Constitutions des Treize États-Unis d'Amérique. Philadelphie et Paris, 1783. Imprimerie de Philippe-Denys Pierres, Imprimeur Ordinaire du Roi.

[2] See the letters from La Fayette to Washington, dated January 1 and February 4, 1788.

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The nobility and the clergy generally conceded that France was already in possession of a constitution, based on the existence of an hereditary monarchy and of the three orders. But the third estate, which was "nothing," and yet was soon to become "everything," almost unanimously demanded that the assembly which was about to meet should, before granting any tax, before transacting any business whatever, formulate a declaration of the rights of man and citizen and settle the basis of a written constitution. "A glorious revolution is impending," says the third estate of the Paris suburbs, expressing thus the general feeling; "the most powerful nation of Europe is going to bestow on herself a political constitution, that is to say, a steadfast existence in which abuses of authority will be impossible." A fundamental law enacted by the nation itself and aiming at the protection of the people against the abuses of authority: such is indeed the definition of a modern democratic constitution. Sieyès thought himself the inventor of it, but La Fayette protested on behalf of America against so unhistoric a pretension.[1]

It was in answer to the demand of the third estate that the Constituent Assembly framed the constitution which was assented to by the King September 14, 1791. The same end was aimed at in 1793 by Condorcet and his friends, the authors of the first project of a republican constitution, a mutilated copy of which was submitted by Robespierre to the votes of the people; and in 1795 (constitution of the year III), in 1799 (consular constitution) and afterwards, a like purpose was manifested, more or less sincerely, according to men and circumstances. In spite of the dictatorships, the idea which the representatives of the nation, when taking their oaths at the Tennis Court, swore to realize was the dominant idea of the French Revolution. The balance of powers experienced the quickest, the most extraordinary changes, individual rights were enlarged and restricted by turns, yet the principle of a fundamental written instrument, framed as the expression of the national will, remained the legal

[1] Mémoires, Correspondance et Manuscrits du Général La Fayette (Paris, 1837–38), IV, 36.

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basis of every régime which issued from the movement of 1789. When the theories of the Revolution were spread over the continent, this principle sprang up everywhere under the feet of her victorious armies. In the Low Countries, in Italy, in Switzerland, constitutions were improvised on the ruins of the old social fabric. These were all similar to the one which the Convention had sent to the primary assemblies of the French people in 1795.

Napoleon destroyed alike pattern and imitations, but he paid his tribute to the principle. He ruled in pursuance of constitutions formally ratified by the people. The Emperor seemed to be all-powerful. For a time he forced the nations to march like armies under his leadership, deciding by his decrees the fate of provinces, as he would have disposed of regiments in battle array. Still the Revolution was superior to him.

> The greed, the excessive ambition of Napoleon himself and of the most influential of his ministers is subject to that power and will remain so in spite of themselves. It cannot be denied that, notwithstanding the iron despotism of his rule, he follows in many things of the first importance the principles of the Revolution before which, at least to save appearances, he is obliged to yield.

This is the evidence of a thoroughly credible witness. It may be found in the secret report on the reorganization of the Prussian monarchy, which Prince von Hardenberg drew up for his sovereign soon after the battle of Jena.[1] Though Napoleon treated the affairs of nations in the spirit of a general issuing orders in an enemy's country, yet he caused constitutions to be framed which have not been without an influence over the development of the states which were temporarily subjected to his sway.

It is well known that, during the Hundred Days, the *Acte Additionnel* which the former despot proposed to France was drafted by Benjamin Constant, one of the most liberal-minded political writers of that day, and one who enjoyed, with only a few reserves, the significant support of La Fayette. The *Acte Additionnel* superseded for a short time the charter most gra-

[1] Denkwürdigkeiten des Staatskanzlers Fürsten von Hardenberg, edited by Leopold von Ranke (Leipzig, 1877), V, 8.

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ciously granted to his subjects by Louis XVIII, which bore the date "June 4, in the year of the Lord 1814, of our reign the nineteenth." After Waterloo and the second abdication of the Emperor, the King on his return from Ghent brought back the charter, and it continued in force until 1830. It was then remodelled by the authors of the July Revolution, and the King-elect, Louis Philippe, in presence of the Houses, solemnly swore to be loyal to it. In 1848, the constitution of the Second Republic was framed by a national assembly elected for that purpose by universal suffrage. The constitution of 1852, which consecrated the dictatorship of the Prince-President, was enacted by Louis Napoleon in pursuance of the extraordinary powers vested in him by the *plébiscite* of December 20 and 21, 1851. Such was the aim and spirit of that instrument, that the mere modification of a title made it the constitution of the Second Empire. It is well known that by a revision liberal institutions were grafted on this constitution by Napoleon III, only a few months previous to the war which was to overthrow it (1870). The present fundamental laws of the French Republic, the last of the eleven constitutions of France, were adopted by the National Assembly at Versailles, February 24 and 25 and July 16, 1875. They have twice been slightly amended, in 1879 and 1884.

III.

When Napoleon was finally overthrown, the Revolution had extended through continental Europe, and even those who had fought most desperately against it had been compelled to borrow its arms in order to conquer. "Principles of democracy in a monarchical government," said Hardenberg, summing up the above-mentioned report, "such is the plan which appears to me most suitable to the spirit of the time." Stein realized that programme. Prussia, humiliated on the battle-field of Jena, resumed the energy of her life, maintained her independence and seven years after, at the head of the German states, led the way to victory.

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The triumph of the Holy Alliance, a union formed in the name of legitimacy and divine right, was to be the signal of a reaction, which cannot rightly be called, however, a counter-revolution. At the Congress of Vienna, in the committee that laboriously worked out the German Confederation, the Prussian plenipotentiaries brought forward, as one of the conditions insisted upon by their government, the provision that the several states of the Confederation should have representative assemblies. Neither Hardenberg nor Stein believed in written constitutions. Each looked upon them as giving too great facilities for criticism, and as likely to encourage "metapolitical" speculations which lead too far.[1] Both statesmen preferred the English system. However, having to determine the conditions of existence for a new organism, they were compelled to draw up the plan of a federal compact. Their project was much too liberal for Austria and it was not adopted; but another was substituted for it, and the German Confederation received a constitution in thirteen articles. The last of these articles was worded thus: "In every state of the Confederation there shall be a constitutional assembly of estates."[2]

This did not explicitly provide for written state constitutions. Nevertheless, the German princes who had been more immediately under French influence thought at once of elaborating charters more or less like that which Louis XVIII had first granted to his subjects. Already, on the 2d of September, 1814, before the opening of the Congress of Vienna, the duchy of Nassau had received its own. This was the first of a series

[1] See a letter from Stein to Eichhorn of January 7, 1818, quoted by Seeley, Life and Times of Stein (London, 1870), III, 403.

[2] "In allen Bundesstaaten wird eine landständische Verfassung stattfinden." The words "landständische Verfassung" have been often translated, "representative constitution." Hence the Vienna Congress is credited by some authors with the establishment of constitutional government in Germany. This is a mistake. Indeed, the question was raised in the conferences of the German plenipotentiaries; but those who were adverse to any liberal solution knew how to turn to account the marked dislike of the smaller states for every provision which might seem to be an encroachment upon their particular rights of sovereignty, and the thirteenth article was deliberately left in equivocal terms. *Cf.* d'Angeberg, Le Congrès de Vienne, II, 1235, 1277, 1280.

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of texts which played an important part in the development of new Germany. Under Napoleon's protectorate Westphalia, Bavaria, Saxe-Weimar, Frankfort and Anhalt-Köthen had received paper constitutions;[1] but owing to difficulties of every kind against which the rulers of these states had to contend during the stormy times of the *Rheinbund*, none had been fully put into operation.

Before he left for Vienna, in September, 1814, Count de Montgelas, minister of the king of Bavaria, called together a committee of revision. When Prussia made known her views respecting the internal organization of the states, that committee was directed to hasten its work. The monarchs of Würtemberg and Baden adopted similar measures and ordered charters to be drawn up.[2] The rulers of Schwarzburg-Rudolstadt, Schaumburg-Lippe, Waldeck and Saxe-Weimar soon followed the example and, meeting with less opposition among their subjects, were able to complete their work earlier than the princes of the south.[3]

In 1820 an article of the Final Act of the Congress of Vienna, completing the federal compact, went into force, empowering the Federal Diet, on the demand of the interested governments, to bestow its guarantee on the different state constitutions. This would have provoked a rapid multiplication of written charters, since they alone were susceptible of being effectually guaranteed, had not the Diet, after 1821, systematically declined requests of this character. We know, too, how Prussia suddenly abandoned the path of liberalism which she had been the first to enter, and became Metternich's most obedient follower. In consequence of this, the development of written constitutions within the Confederation was for a

[1] Westphalia, November 15, 1807; Bavaria, May 8, 1808; Saxe-Weimar, September 20, 1809; Frankfort, August 16, 1810; Anhalt-Köthen, December 28, 1810.

[2] Difficulties of execution hindered the promulgation of these three constitutions, in Bavaria and Baden till 1818, and in Würtemberg till 1819.

[3] Schwarzburg-Rudolstadt, January 8, 1816; Schaumburg-Lippe, January 15; Waldeck, April 19; Saxe-Weimar-Eisenach, May 5. To these charters may be added those of the principalities of Saxe-Hildburghausen, March 19, 1818, and Liechtenstein, November 9.

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time checked. Hanover had received her charter December 7, 1819; Brunswick, April 25, 1820; Hesse, December 17 of the same year; Saxe-Coburg, August 8, 1821. Then follows a gap in the record until 1829, when a constitution was bestowed on Saxe-Meiningen. In 1831 those of Hesse-Darmstadt, Saxe-Altenburg and the kingdom of Saxony went into effect; in 1833, that of the principality of Hohenzollern-Sigmaringen; in 1836, that of Lippe-Detmold.

Now was to begin the great agitation which ended in the Frankfort Parliament, and in the generous but vain attempt to found a liberal empire under the ægis of the Prussian monarchy. From those days date the first constitution of the free town of Lübeck (1846), the constitutions of the duchies of Anhalt, those granted respectively by the king of Prussia (1848) and the emperor of Austria, those of Bremen, Oldenburg and the principality of Reuss-Schleiz (1849), and numerous revisions, or rather attempted revisions, of existing charters by conventions elected for the purpose.

The awakening of Germany from her dream of liberty and the repression which followed are familiar history. The development of political institutions suffered of course from the reaction. But the year 1848, which had witnessed an array of all the intellectual leaders of the German nation enthusiastically proclaiming her need of unity and progress, could not be erased from history. The influence of that great national movement on the future of Germany was greater than that of the reaction. Hamburg received her constitution in 1860. Finally in 1867, after the transformation of the old *Bund* into the North German Confederation, the principality of Reuss-Greiz obtained its charter. The compromise (*Ausgleich*) which now united the two halves of the Hapsburg monarchy into an empire also dates from 1867, and during the same year the constitution of the Cisleithan part was promulgated.

Nearly all the other countries of continental Europe have adopted in turn the system that France borrowed from America and transplanted into the old world. Besides the tiny states of Andorra, Monaco and San Marino, the only exceptions are

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the Russian and Ottoman empires, which, from the point of view of political science, have not yet entered the era of modern civilization;[1] Montenegro, which is in nearly the same condition; Hungary and Croatia-Slavonia, which, within the limits of the compacts by which they are bound to each other and to the empire, have in their internal constitution maintained a system analogous to that of England; and finally, in the midst of the German empire, the duchies of Mecklenburg, which, in spite of general example and of the votes of the Imperial Diet, steadfastly maintain mediæval institutions.

The first constitution of Switzerland was that of 1798. The ancient *Bundesbrief*, which bound together the primitive *Waldstätten*, was dated five centuries earlier, and had been again and again renewed and extended to other cantons as they entered the league; but the compacts thus formed were rather international treaties than constitutions. Out of the old confederation of states the act of 1798 created a unified republic, on the pattern of the French. The experiment utterly failed. After five years of civil disturbance the Swiss welcomed the mediation of Bonaparte, the price of which was to be a standing contingent of 1600 men for his armies. According to the scheme of the First Consul each canton was restored to its original sovereignty and received a constitution embodying the outlines of its political organization. In 1814 the mediator's work fell to pieces, and in the following year articles of union, agreed upon by a Federal Diet at Zurich and subsequently approved by the Vienna Congress, took the place of the act of 1803. In this Compact of 1815 it was presupposed that the public law of the several cantons was, or would be, codified. The contracting parties mutually guaranteed their constitutions, and it was agreed that one copy of each should be deposited in the

[1] A part of the Russian empire, the grand-duchy of Finland, is to be mentioned as having a constitution. The country was Swedish until 1809, and when ceded to the Czar Alexander I by the Treaty of Freidrichschamm, was governed under charters granted in 1772 and 1789 by Gustavus III. The present constitution, which superseded the charters, was framed by the states-general of Finland and put in operation in 1864 by the Czar Alexander II as grand-duke.

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federal archives.[1] This restored *Staatenbund* continued up to the civil war that gave birth to the *Bundesstaat* of 1848. The federal constitution then framed was remodelled in 1874, taking the form it has maintained to the present day. The new text was submitted to the Swiss people for approval or rejection, and was ratified by popular vote. Each state of course kept and developed its own cantonal constitution.

The modern fundamental law of Sweden dates from 1809. It was by no means the first of the kind that was established in the Scandinavian kingdom. As far back as 1634 an elaborate *Regeringsform*, drafted by Gustavus Adolphus and his chancellor Oxenstjerna, had been promulgated. This charter may be compared to Cromwell's Instrument of Government, and but for the premature death of Gustavus at Lützen, it might have proved of the greatest consequence, for it would probably have been proposed as a model to the allied North German princes. Unfortunately, at the time of its promulgation, Sweden had just lost her greatest king and with him the chances of leading in the formation of an empire. The subsequent codifications of public law of the Wasa monarchy are important only for their bearing on the internal history of Sweden. The constitution of 1809 was the product of the revolution which dethroned Gustavus IV. It was framed by

[1] The present boundaries of the Helvetic Confederation date from that epoch. Of the twenty-two commonwealths which then formed the Swiss *Bund*, one especially, the ancient republic of Geneva, may be said to have been in some respect conversant from the days of old with the system of written constitutions. Not long after the Reformation, in 1568, a *Code d' Édits*, declaring and settling the forms of the traditional government of the state, was proposed to the people and ratified by a vote of the citizens assembled in St. Peter's cathedral. Numerous revisions of it were made by the same process in the course of the following centuries. In 1794 a downright modern republican constitution was framed, and may be regarded as the first of this kind which went into operation in the old world. Formerly the public law of the city of Calvin made no essential distinction between political and civil edicts. It was little known abroad. But its "Codes" are, nevertheless, to be remembered, together with the "covenants" and "fundamental orders" of New England, as another instance of the results which Protestantism produced in the sphere of secular policy. The Bible to which the reformers appealed from the ecclesiastical tyranny of Rome was a written law. No wonder that wherever they had a civil power to establish they thought of setting over it a written statute as a safeguard against misgovernment.

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the states-general and assented to by the Duke of Soedermanland, king-elect under the name of Charles XIII.

The constitution of Norway was established in 1814 by the convention that met at Eidsvold and proclaimed the country independent of Denmark. It was accepted the same year by the Swedish king, Charles XIII, when he took possession of the crown. We might cite a Danish *lex regia* of 1665. But this, being the result of a coalition of king, clergy and people against the ruling aristocracy, was only a mode of conferring absolute power upon the king. The modern constitution of Denmark is not older than 1849. Iceland received a special charter in 1874.

The *statuto fondamentale* of Italy is the same which was granted March 4, 1848, by Charles Albert to his subjects of Piedmont and Sardinia, and which was successively extended in 1859, 1860, 1866 and 1870 to the annexed parts of the kingdom. This statute had nineteen precedents in texts promulgated in the several parts of the peninsula after 1797, the year in which General Bonaparte founded the Cisalpine Republic.

From the era of the Batavian Republic dates the first constitution of the Netherlands. It was voted by the people in 1798 and, in consequence of events which had taken place in France, was revised in 1801 and 1805. King Louis Bonaparte issued his own constitution in 1806. Finally, in 1814, Prince William Frederic of Orange, on his return from exile, proposed to the assembly which met at Amsterdam and subsequently, after having received the crown, to the States-general of Holland and to the Belgian Assembly of Notables, the articles that still form the political foundation of the monarchy.[1] The grand-duchy of Luxemburg, the administration of which was transferred by the Vienna Congress to the house of Orange-Nassau, was ruled under the constitution of the Netherlands until 1841, when it received its own charter. In 1848 this gave place to a new constitution, which was thoroughly revised in 1856 and superseded by another in 1868.

[1] In Belgium the project was rejected by the Notables. It was nevertheless promulgated by the King, August 24, 1815.

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Spain owes her first constitution to Joseph Bonaparte. Discussed *pro forma* and adopted in 1808 by an Assembly of Notables at Bayonne, it was superseded in 1812 by that of the National Cortes of Cadiz, which was accepted by Ferdinand VII, then repealed by himself (1823), and followed afterwards, according to circumstances, either by granted charters or by fundamental charters framed by constituent assemblies. The present constitution was framed in 1876 by the Cortes which Alphonso XII summoned after the Carlist insurrection had been brought to an end. The act drawn up in 1812 at Cadiz served as a model to the Cortes of Portugal, which was summoned by King Juan VI in 1820. The statute elaborated by this assembly was enacted in September, 1822. However, being too democratic to suit the wishes of the court, it was suppressed by the King as early as 1824. Juan's successor, Dom Pedro I, Emperor of Brazil and King of Portugal, when on the point of abdicating the second of his crowns in favor of his daughter, Doña Maria, granted in 1826 the constitutional charter which remains, after many vicissitudes, the fundamental statute of the realm.

If ancient monarchies, in which the traditions of public law had not been broken, felt the need of securing by written instruments the results of constitutional growth, new states which had sprung up in Europe under the influence of the same current of modern ideas, could scarcely avoid giving a precise formula to their political liberties. The first care of the national assembly which in 1822 proclaimed the independence of Greece, was to adopt the provisional statute of Epidauros.[1] Suspended by war and the numerous obstacles that hindered for years the realization of the Hellenic patriots' wishes, this statute was followed in 1827 by the constitution of Troezen and finally, in 1844, by the work of the assembly of Athens, which gave at last a firm constitutional basis to the government of King Otho.

[1] January 15, 1822. In 1821 three republican constitutions had been provisionally established in Greece, *viz.* the constitution of the West (Acarnania, Etolia, Epirus), adopted November 4, by the Missolonghi assembly; the Salona constitution, for the East (November 16); and the constitution of Peloponnesus (Argos, December 1).

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This constitution was revised in 1864, after the election of George I. Belgium, after separating from Holland, gave herself the constitution of February 7, 1831, which is now for the first time in process of revision. The several provinces which have broken away from Turkey, with the exception of Montenegro, have followed the example of occidental countries. Rumania adopted a constitution in 1866, Servia in 1869,[1] Bulgaria in 1879.

IV.

It needs hardly be said that the numerous texts which have been noticed are not all of one type. They may be classed in three groups: the charters granted by sovereigns to their subjects; the fundamental compacts agreed to by princes and representative assemblies; and the constitutions based on the principle of the sovereignty of the people.

The first of these types was the result of an attempt to satisfy in some measure what Hardenberg called the spirit of the time, without unduly encroaching upon the exclusive sovereignty of the reigning houses. But the old bottles were ill adapted to the new wine, and charters granted by the monarch have now become quite obsolete in the occidental world.

Unquestionably a more liberal expedient was the compact. It was an attempt to harmonize royal and parliamentary rights, though at the sacrifice of sound political doctrine. By this expedient sovereignty was divided into halves. It was to this device that many German princes resorted after the grants which they first thought of making, *motu proprio*, had been rejected by their emancipated subjects. This, more or less apparently, is the form under which most of the written monarchical constitutions of Europe have come into existence.

The constitutions of the third group are imperative acts of the nation itself. This type, which alone completely answers to the principles of the Revolution, is of course to be found in republican states, like the American Union, the French Republic and the Swiss Confederation. Among the existing

[1] Servia, whose autonomy dates from 1830, had a still-born charter in 1835.

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monarchic constitutions, two or three have a certain connection with this class. The Greek *Syntagma*, framed by the constituent convention of 1864, can be revised without the co-operation of the king. The Norwegian constitution of 1814, at least according to the construction of the Christiania Storthings, and, in a sense, the Belgian constitution of 1831, are of the same character.

Of all the states that have now adopted written constitutions, none has ever permanently gone back to the former system. From the very nature of the new principle follows the steady continuance of its progress. A nation, having once had political institutions adequate to her wants precisely outlined in a fundamental law, can scarcely destroy that law without sooner or later substituting another in its place. We work our way out of the indefinite into the definite, not the reverse. It may then be safely predicted that the considerable extension of written constitutions which has taken place during this century will be lasting. If changes in practice are to be expected, it is in the countries that have not yet accepted the modern principle. But we have seen that in Europe these are comparatively few.

The South American republics and the numerous and powerful English colonies that now enjoy home rule cannot be considered in this article, already overburdened as it is with dates and condensed information. But the writer is fully aware that all these states have comprehensive fundamental statutes of government. Such general recognition of the rule that constitutional law should be explicitly enacted by the sovereign power in the state gives a peculiar importance to the history of its rise and progress. Not to write this history, but to suggest that it deserves to be written, and to show that the United States and France have led in the development of written constitutions, has been the object of this article.

CHARLES BORGEAUD.

GENEVA, SWITZERLAND,
August, 1892.

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THE COMMERCIAL POLICY OF EUROPE.

WHEN Central Europe shall be united — and it will be so some day — the interest of all will be evident; France backed by Germany will face England, which is the spirit of commerce, and will force her back into the ocean; Germany supported by France will confront Russia, which is the spirit of conquest, and will drive her back into Asia.

The half-century which has elapsed since Victor Hugo wrote these words has apparently not developed any tendency toward a fulfilment of the prophecy. England still leads the nations in commerce and industry, and the relations of France and Germany to each other and to Russia are diametrically opposite to those predicted. All eyes are upon the war cloud which hangs over Central Europe, and meanwhile little attention is paid to a more real danger which impends from across the seas. The steel rail and the iron freight-steamer, rather than the repeating-rifle and the armored cruiser, constitute the real menace to Europe's permanent prosperity. She is threatened, not so much by war, as by starvation in the midst of plenty. Commerce has ruined agriculture, and now Western Europe, as she turns from the field to the factory, finds the great markets of the world closed to her products. She sees the United States, Russia, Canada and Australia refusing a fair exchange of goods.

The momentous changes in commerce since our Civil War have not been duly appreciated by us; for they have brought peace and plenty to our land, while the burden has been cast upon Europe. Of course the destructive competition of the American, Russian, Indian and Australian wheatfields is well known and has been much discussed; but these changes in the past promise to be more than equalled in the future. New lines of commercial enterprise are constantly developing. The frozen-meat trade of Australia was almost unknown ten years ago; but 17,000 carcasses of mutton were shipped in 1881,

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while 3,300,000 were sent to Europe last year. Steamers are arriving in Europe laden with hundreds of tons of butter. Lumber is landed at Hamburg and Marseilles from Canada cheaper than any forests of Europe can furnish it. American oils are supplanting the oils of Italy and Spain. Southern Africa already sends many pears, grapes and peaches. Shipments of apples from Australasia have increased in ten years from 10,000 to 490,000 cases annually. Spanish oranges are displaced by the Florida fruits. Shipments of raisins from California, but 780 pounds in 1873, amounted in 1891 to 18,801 tons, and 15,502 tons of citrus fruits were exported at the same time. A total of 7239 car-loads of dried and green fruits were in that year put upon the market from California alone. Even the market gardens of Europe will be threatened. A project is now on foot by which vegetables, shipped in refrigerators, can in three weeks be landed in Europe. And all this before the completion of the direct water route across Central America, which before many years must become a mighty factor in international trade.

All these changes are due to permanent and natural causes; they mean cheaper and better foods, and the people of Europe may adapt themselves to the new conditions. But in order to share in these new-found blessings they must be able to give something for them. If the agriculture of Europe is ruined, she must develop the peculiar aptitudes of her people in manufacturing industry. The first impulse is to keep out the cheap foods; the second is to accept the inevitable and try to find something else to produce. In Germany the agricultural protective movement — the policy of exclusion — reached its climax in 1887; the new treaties of 1892 mark the adoption of the second policy — that of conciliation. Germany has now reached that stage of development when a foreign market is absolutely necessary to her prosperity. Chancellor von Caprivi in his great speech declared: "We must export either goods or men." France, set back half a generation by the disasters of 1870, has not yet reached this second stage, but is still following the path of exclusion, in the vain attempt to protect her farmers.

The two years which have elapsed since the passage of the

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McKinley tariff have been a transitional period, during which nearly every civilized country of the globe has remodelled its tariff. Canada adopted the protective system as early as 1879, Australia followed a decade later, the United States reaffirmed the principle in 1890 and Russia has done the same during the last year. Here, then, are the four great agricultural nations of the world uniting in a policy of commercial restriction. Frederick List, the great German protectionist, delighted to speak of Central Europe as a common market, which, like a great cask, was tapped on every side. To-day the process seems to be reversed. Germany appears as a great reservoir into which all the new lands of the earth are pouring their products, and which the iron bands of Bismarck's protection were designed to keep from bursting. But the necessity of a change has become apparent, and the crisis has been precipitated by the recent conjuncture of events. The political collapse of Prince Bismarck is perhaps the most impressive evidence of the complete revolution in policy which has taken place.

The 1st of February, 1892, was the date on which nearly all the commercial treaties of continental nations were to expire, and over a year before that time the various countries of Europe began to prepare for the rearrangement which it was seen must follow. Little Switzerland, preëminently an importing nation, prudently took time by the forelock and increased her duties on imports, with the express purpose of plàcing herself in a position to demand concessions from her powerful neighbors in return for favors granted; France, Spain and Portugal were in the throes of tariff discussion early in 1891; and Sweden and Norway stood ready to accept thankfully any favors which might come their way. The rearrangement which followed was largely influenced by a series of events all tending to the same result — a restriction of the foreign demand. The Argentine collapse, the Chilian revolution, the reciprocity agreements of the United States and the "Pan-American" policy of our present administration, following upon the McKinley act, all threatened Europe with a further limitation of its foreign markets; and finally the failure of the crops in 1891 brought matters to a focus. The net

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result of all the negotiations and debates is as follows: Six distinctly prohibitive tariffs have been adopted. A half-dozen commercial treaties have been concluded, involving a net decrease in rates in four cases and modifications in the other two. France is involved in a tariff war with Spain, Italy, Rumania and Portugal. Spain is threatened with a tariff war with Germany, and Russian trade with the Teutonic nations is greatly embarrassed.

From this it appears that Europe is divided against itself. Two diametrically opposed policies are distinguishable. On the one side we see France, Russia, Spain, Portugal and Rumania, enacting new tariff laws which are intended to prevent foreign imports; opposed to them we see Germany, Austria, Italy, Belgium, Switzerland, Servia and Turkey forming a commercial league, not in any sense on a free-trade basis, but recognizing the necessity of commercial intercourse between nations. The principle of one group is well indicated by a passage in Bismarck's speech on the 2d of May, 1879:

> Even England will have a protective system in a few years. Trade between nations is to the advantage of one party over another, and so can never lead to friendly political relations.

Chancellor von Caprivi voiced the principle of the second group in his speech of December 10, 1891, on presenting the Austro-Hungarian treaty for ratification:

> Shall we imitate the tendency which prevails in Russia, America and France, and continue to isolate ourselves, or shall we go still further and completely shut ourselves off from the world? The consequence of such a fatal step would be a war of all against all. Even if we were willing to continue under our existing system, the continual struggle for existence would undoubtedly force Germany to give up one industry after another.

These two opposite policies are but attempts to solve the problem presented by the commercial attitude of the United States, the Australian colonies, Canada and Russia. The one group seeks to protect national interests on the lines of national isolation, and in five states this policy has been advocated by majorities of from two-thirds to three-fifths of the legis-

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lative bodies; the other realizes the inadequacy of national markets to support national industries, which have been developed, perhaps, during a primary period of exclusion, and seeks to extend these markets by mutual concessions. While in both groups the principle of protecting home industry is dominant, the methods of obtaining such protection are fundamentally different, and in themselves foretell future changes of policy. It is the purpose of this paper to trace the effects of the two contrasting methods, and to discover what the possible outcome may be, with its influence upon the trade of the United States.

Germany.

In order to appreciate the importance of the new treaties to Germany, a historical sketch of her tariff legislation is necessary.[1] The main importance of these treaties is found in the reduction of the duties upon food stuffs, and those we shall consider first. In 1818 the Prussian duty upon wheat was forty-four pfennigs per 100 kilos, and it remained about constant until 1865–70, the free-trade era, when all the duties were practically removed. After our Civil War, with the enormous increase of the world's wheat production, the landed interests demanded protection and found their champion in Prince Bismarck. His avowed aim was to rescue the agricultural interests in particular, while granting some measure of protection to the manufacturing industries. His professed views changed completely from those he held in 1869, when he advocated a tariff for revenue only, on objects whose consumption was optional, not necessary. Between 1875 and 1879 he became convinced that it was in the power of government to alleviate the general distress. He had for a long time been in sympathy with Delbrück's free-trade views, but with the retirement of the latter from the cabinet he mapped out a new course of action. His plan was to lay duties upon raw materials and half-manufactured goods for a time, to

[1] An admirable account of this legislation appeared in the *Yale Review* for June, 1892. Since, however, the present article was prepared prior to the appearance of that paper, the sketch is retained for the sake of continuity.

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tide over the temporary depression. Consequently in 1879 the tax on grains was doubled, that on wheat, for instance, being raised to one mark per 100 kilos. By 1885, Bismarck seems to have come to regard the tariff as a permanent institution, and under his leadership the then existing rate on wheat was trebled and that on rye doubled. In 1887 these rates were again nearly doubled, being raised to five marks per 100 kilos for wheat, and on other grains in the same proportion.

Financially this increase of duties has been very successful. Imports of grain have regularly increased in amount. Yielding eight per cent of the total import revenue in 1880, they produced 27.4 per cent of it in 1889. As early as 1885 the corn duties became fourth in importance, and in 1888 they rose to the first place. In the first protective period, from 1879 to 1885, the imports of grain exceeded the exports by 1,900,000 tons, while in the second period, 1888 to 1890, the excess rose to 2,530,000 tons. It is interesting to note here that the United States gained no advantage from this increase; our shipments of grain to Germany actually decreased from an average of 81,450 tons for the years 1880–82 to 29,000 tons in 1888–90. This decrease was due largely to increased Russian and Austrian supplies. The net importation of grain from Russia rose between 1879 and 1890 from 40.9 per cent to 53 per cent of the total; while the Austrian imports meanwhile fell off relatively from 30.5 to 26 per cent. These figures well show the increasing importance of the Russian, as compared with both the Austrian and the American products.

The imposition of these duties has not, indeed, prevented a fall in the price of wheat, which in 1880–90 was lower than from 1850 to 1870, and far below prices between 1870 and 1880; but the true effect of the duties is most clearly seen by a comparison of prices with those in other countries. England paid fifty-two marks per ton more for wheat than did Prussia in 1870–80; three marks more in 1881–85; bought it nine marks cheaper in 1886, thirty-two marks cheaper in 1889 and forty-four marks cheaper in 1890. The comparative rise of price has not always been equal to the tax, but that it has been considerable is

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evident. This, however, would not be inconsistent with Bismarck's theory, since he repeatedly affirmed in 1879 and in 1885 that a low price of grain was neither a sign of prosperity nor an aid thereto. Along with these corn duties since 1879, the protective system has been largely extended to manufacturing industries, as in 1885, when duties on cottons, woollens and machinery were imposed. The customs receipts have doubled since 1878, and the tax per capita has increased from 2.62 marks in that year to 6.14 marks in 1888–89.

What, now, has been the effect of these taxes upon the several industries? As far as any benefit to agriculture is concerned, all authorities agree that the result has been worse than useless, Rents have neither been raised nor even kept constant; mortgage indebtedness has not decreased; domestic grains are confessedly inferior to those imported; there has been no appreciable increase of acreage under cultivation; while, as above noted, imports have continued to increase enormously, and even the slight current of exports from West Prussia has been turned back again. An irrefutable proof of the failure of this policy is offered in Chancellor von Caprivi's speech of December 10, 1891. "German agriculture," he declared, "is in a most unprosperous condition. It is undoubtedly true that these high protective duties have not done for the farmer what was expected of them. Nevertheless," he added, "without these protective duties, we should have had to face an agricultural crisis." The corn laws, then, have been useful as a temporary expedient to mitigate the hardship of a transition period; this much must be acknowledged by all.

With regard to manufacturing industry the case appears to be quite otherwise. Here the limitations upon the expansion of production are less rigid, depending rather upon personal aptitudes than upon inherent and unchangeable qualities of the soil. The result here has been to realize expectations more fully. Germany has enormously extended her trade with the United States, with South America and with Australia, and has proved a formidable competitor to England. A comparison of India's trade in 1888–89 with that in 1890–91 shows as to imports a

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trifling decline from England, with a seven-fold increase from Germany, and as to exports, a decrease of eleven per cent to the United Kingdom, with an increase of two hundred per cent to Germany.[1] In 1880–88 Germany's share in the total importations into the United States rose from 7.87 per cent to 10.83 per cent; France in the same period decreased in importance slightly, and England's contribution fell from 31.51 per cent to 24.57 per cent.[2] Within the last decade Germany's total exports have more than doubled. In Spain her imitations of American goods are very popular; her trade with Central and South America is everywhere conspicuous; and it is the extension of her commerce in the East which has in large part induced the "Greater Britain" movement. We may conclude, in short, that in this respect the protective system has been useful in developing German industry and has made of her one of the great manufacturing nations of Europe, second to England alone.

But recently this progress has been checked. By the closing of Russian markets German trade declined in that direction from 228,000,000 marks in 1880 to 131,000,000 marks in 1887; and by the tariff of 1890 the United States, which during the preceding decade had absorbed nearly fifty per cent of Germany's enormous increase in exportation, closed this channel to further development. The result of the situation thus produced was the commercial treaties of 1892. The administration began to negotiate them early in 1891, but decided to postpone their ratification until the attitude of France should be revealed. The marked tendency of the French legislature towards a policy of exclusion seems to have been the final event which determined the policy of the empire.

The salient features of these new treaties may be summarized as follows: First, the duties established are declared unchangeable for twelve years, insuring stability of conditions for that time at least. Second, the maximum tariff upon wheat and rye is reduced from five to three and one-half marks per 100 kilos. This provision recognizes the futility of former high grain

[1] London *Daily News*, June 1, 1892.

[2] *Cf. Jahrbücher für Nationalökonomie und Statistik*, Sept., 1892, p. 429.

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duties and the necessity of cheap food for a manufacturing nation; and it manifests a reaction from Bismarck's policy of special legislation in favor of the large landed proprietors. Third, with no great reduction of duties upon manufactured goods, there is evinced an earnest desire to extend the markets for German exports; and consequently a market for her food stuffs is offered to Austria-Hungary in return for a partial preference given to German manufactures. Fourth, there is manifested a spirit of accommodation toward Austria-Hungary, especially in reference to the inspection of meats and produce and in the matter of railway rates. The regulations which had been used by Bismarck to discourage and in many cases to prohibit importation from Austria are replaced by a rational system of inspection and supervision, which is considered a great victory for the grazing interests of Austria. Agreements are also made in regard to copyrights, trademarks and patents, which will tend toward coöperation in enforcing the existing laws. Fifth, the treaties are not exclusive in any sense, but are open to all nations which choose to accept the conditions. Neither are they aggressive in spirit. They are essentially commercial and not political, although important political results may flow from them in the future. Finally, the treaties involve a considerable sacrifice of revenue by the governments concerned. It is estimated that the customs receipts of Germany will be diminished by about 11.2 per cent; of which reduction about seventy-five per cent is on grain duties, six per cent on wood and vegetable products and eleven per cent on meats and dairy produce. Since it was for the interest of Germany to reduce these duties in any case, her diplomacy has achieved a distinct triumph in securing a price for the reduction. Austria's sacrifice of revenue is only about four per cent, on paper, leather, iron and glass wares; but perhaps the benefits she derives from the treaties are proportionally small.

As to Germany's relations with other countries, it may be said that they will not be greatly affected. With France, article XI of the Treaty of Frankfort guarantees the same duties that are accorded to the most favored nation; but the trade between the two nations must be unfavorably affected by the new French

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tariff. So, too, in respect to Spain, any changes in the general conditions of German trade will be due not to the treaties, but rather to the Spanish tariff. The United States has given free entry to German sugar, and has secured in return the removal of the prohibition upon the importation of swine into Germany. The most important influence of the new American tariff was manifested in the inception of these treaties; further results will be seen in the restriction of exchange between the two countries, and in the tendency of Germany to turn to Central Europe for markets.

Austria-Hungary.

The new treaties seem to have been most warmly welcomed by Austria-Hungary; her financial sacrifice was not to be great, her agricultural interests would surely be benefited by the change, and her manufactures were not seriously menaced. Opposition seems to have come only from the anti-German forces, — the Young Czechs, the Croatians and the anti-Semitic representatives, — and their filibustering was to no purpose. The new regulations brought too great benefits to the grazing interests, especially, as I have noted, in the abolition of the railway discriminations and so-called sanitary measures of Prince Bismarck's régime.

The relations of Austria-Hungary to the Danubian states are of great importance in view of an European union. These states, including Turkey, are almost exclusively agricultural, although silks and woollens were formerly produced there in considerable amounts. The great obstacle in the way of commerce is the lack of internal transportation facilities, which tends to centre all trade in the seaports. Constantinople, which formerly controlled four-fifths of this trade, has now but about one-half, and Smyrna, Beirut and other Mediterranean ports are more prominent. This tendency of course has been to the advantage of England, but the extension of the railways in the future must bring Austria and Germany into a far better position. A treaty is under consideration between Austria-Hungary and Servia, to replace one that expired September 30, 1892.

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Rumania, since the tariff wars of 1885–87, has been under the influence of a protectionist party, and has definitely entered upon the policy of exclusion. It is doubtful if she would agree to any commercial treaties, but the other states seem more favorably disposed to do so.

With Italy the relations of Austria-Hungary are harmonious, the only friction having been in regard to the wine duties. There was, however, no real ground of difference, as the two countries produce different qualities of wine, which are not competitors in any market.

France.

The economic movement in France is following the same lines that have been followed in Germany, and at the present time it seems to have reached that point which was reached in Germany in 1879 and the following years. The reaction from the policy of Napoleon III has been retarded by the influence of English legislation, by the natural inclination of France during this century to economic freedom, and, lastly, by the disorganization of 1870. Now, however, the competition of new lands, the strong national sentiment and the need of increased revenue have induced a change of policy. Since 1880 the duties on grain and agricultural products have been increased; on wheat, for example, from sixty centimes to three francs per quintal in 1885, and to five francs in 1887. The free-trade policy of the Second Empire was never completely realized, inasmuch as duties on manufactures were not removed along with those upon food stuffs. Accordingly the agricultural branches of industry, which since 1870 have been exposed to the keenest competition, have enjoyed the least protection. M. Méline, the protectionist leader in the present Chamber, asserted that "agriculture had been protected by duties of but ten to twenty-five per cent *ad valorem*, while manufacturers enjoyed duties of from twenty-five to sixty per cent." The new French tariff of February 1, 1892, has been represented to the people as essentially an agricultural protective measure. But it is claimed by the

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opposition, and with some plausibility, that the agricultural South is deluded in imagining that the new tariff will equalize this protection between industries. They assert that while the duties on food stuffs have been raised, the rates upon manufactured goods which the farmers consume have been increased in a still higher proportion. If this be true, the net result has been to leave the disparity as great as before; duties are ostensibly levelled up, but in reality, both classes of duties being increased, the advantage accrues to the manufacturing interests. In fact, but seventeen days after this tariff "for the farmer" was imposed, the Agricultural Society, numbering four thousand members, adopted a resolution declaring the new rates on food stuffs to be entirely inadequate, and a campaign has been set on foot to abolish the minimum duties altogether.

The occasion for the adoption of this new tariff policy by France was afforded by the expiration of the commercial treaties of 1880–82 with Portugal, Spain, Belgium, Sweden, Switzerland and England. A year before the date of expiration the agitation for a different system began. In March, 1891, M. Méline, as chairman of a special committee of the Chamber of Deputies, made an elaborate report, embodying a project of a new tariff. After a debate which lasted until the end of July, the bill went to the Senate, who sent it back to the Chamber with 176 amendments. Of these 148 were accepted, and the bill passed on the 30th of December by a vote of 396 to 112. The only serious difference between the two houses arose in regard to the duty on petroleum, the Chamber desiring low duties to favor Russia, while the Senate favored an increase, to be used as a lever in forcing open Russian markets to French goods. All through the debates the lower house showed a more liberal tendency than the Senate, preventing, for instance, any increase above five francs per quintal on wheat, the duty imposed in 1887, although they could not prevent a considerable increase in the duties on flour, bread and meats. In the Senate, under M. Jules Ferry, the wildest protective measures were advocated, and one orator is even said to have proved that the ravages of the phylloxera were due to the free-trade policy of Napoleon

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III. It was the Chamber of Deputies alone which prevented such extravagance from appearing in the bill as it was finally passed. This was done by the concurrence of the farmers of the North and the agricultural interests of the South, without which the bill could not have reached a successful issue. The distillers of Bordeaux and the manufacturers of Marseilles, Lyons and the South set up a very stout opposition to increased duties on raw materials, on the plea that these more than offset the increases upon manufactured goods; and both these industries were dissatisfied. The sectional spirit was conspicuous all through the debates, and many incidents might recall some debates in this country. As one orator from Bordeaux expressed it: "I look about me, and I see nothing but a tumult of passion, the eager covetousness of the North armed against the South as against an enemy."

The law as it went into effect February 1, 1892, contains two complete schedules, consisting of maximum and minimum rates respectively. The first schedule is to apply to those countries — only three or four in number — which refuse to France the advantages of the most favored nation; the minimum schedule is that for general application, and is in itself intended to be a prohibitive measure. The idea of commercial treaties is abandoned, in large part because of the uncertain nature of political majorities in France, which makes negotiation almost impossible. Duties upon grains are maintained at the high figures fixed in 1887, although it has been clearly shown that grain prices in Paris, which before 1885 averaged fifty centimes lower than in London, have since that year run from seven to eleven francs per quintal higher,[1] and that, nevertheless, during all this time imports have continued to increase from year to year. The rates upon live animals, beef and meats of all kinds are raised to a prohibitive rate, and the duty upon pork is increased from 4.50 francs per 100 kilos to fifteen and twenty francs for the respective schedules. When it is considered that France imports nearly twice as much food as she exports, and that she

[1] See article entitled "Il Caro del Grano e il Dazio," *Giornale degli Economisti*, June, 1891.

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is therefore clearly unable under any circumstances to supply her own needs in this respect, the great increase of duties on food stuffs appears to be one of the most objectionable features of the law. Rates upon yarns, woollen cloth, iron manufactures, machinery and cotton cloths are largely increased, as well as the duty upon wood. The free list includes cotton, flax, hemp, jute, raw silk and hides; but a surtax of 3.60 francs is imposed on all goods landed in Europe except Australian wool. A large increase of revenue was anticipated from the law — 327,600,000 francs by the Chamber bill and 352,000,000 francs on the bill proposed by the Senate. The first four months, however, show a great falling off in receipts, and in April, 1892, they were over 1,000,000 francs less than during the corresponding month of 1891. It is too early to draw trustworthy inferences from these figures; all that can be said is that the large increase of revenue which was needed and expected has not yet appeared.

With this law is associated an administrative measure which seems to imitate our own act of October, 1890, in assuming that the importer is an unproductive trader. Goods are arbitrarily classed in such ways as to entail the maximum annoyance with the most burdensome duties. For example, an English mineral powder, which is packed in paste-board or tin boxes and which was formerly free of duty, is now taxed at four francs per double centner. The duty on a certain package of this powder amounted to 6.24 francs; to this were added 7.64 francs for the box, two francs for labels and 1.78 francs on the show cards, making a total, with stamps, of seventeen francs. Duties are laid even on the trade lists and advertisements of foreign firms, in the hope of discouraging their enterprise.

The advocates of this measure seemed regardless of the fact that such prohibitive enactments might lead to retaliation by other countries. The system of maximum and minimum tariffs was adopted in the belief that it secured all the advantages of reciprocity without entailing any concessions in return. France goes to other nations demanding favors, not with a tender of concessions on her part, but with a threat of punishment in case of refusal; and it is interesting to note the effect of this attitude

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upon her neighbors. Her system came first in conflict with the equally resolute prohibitive system of the United States, and here the outcome was a nominal concession on each side. The expectation in France was that the removal of the discrimination against American pork, although duties were trebled as we have seen, would be regarded by the United States as a substantial concession, calling for considerable favors in return; but our government refused to regard the removal as more than an act of simple justice. An offer of France to reduce duties on corn and petroleum in return for concessions on wine and silks was declined, and the final arrangement, signed February 29, consisted merely in the grant by France of the minimum rates on canned meats, timber, hops, dried fruits, and a few other items, in return for a continuance of the free admission of her hides, sugar and molasses under the McKinley Act. None of these commodities figures largely in the trade between the two countries, and the arrangement has importance only for some of the French colonies.

Among the European states France's attitude of "fraternity with claws" has met with the reception which might have been expected. On January 24, 1891, the governments at Brussels, Berne, Lisbon, Madrid, The Hague and Stockholm were notified that the expiring commercial treaties would not be renewed, but that a continuance of trade and copyright regulations was desired; the Swedish government was the only one that consented to consider the two matters separately. On December 15, again, M. Ribot issued a circular note asking for the most-favored-nation treatment from these countries as a return for France's goodness in not subjecting their commerce to the maximum tariff, and graciously adding that in view of this favor France reserved the right to terminate the agreements at a year's notice. Spain answered by granting temporarily the benefit of her minimum schedule under the law promulgated January 1, 1892, which minimum was even more prohibitive in its nature than that of France. The reply of Belgium, which was coquetting with both France and Germany, was to threaten the imposition of a surtax on all French goods

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which were favored by bounties, especially cotton yarns, unless France granted more reductions. Italy proposed an export bounty to countervail the special aid accorded to the production of raw silk. Switzerland granted the rates allowed to Germany, but provisionally and on condition of revision and reduction, which, however, could scarcely be expected; and the minister to France, M. Arago, wrote to the president of Switzerland:

> In consequence, we must keep our hands quite free toward France, while regretting that a country with which we are bound by such ties of friendship should have thought fit to adopt an economic policy, the consequence of which can only compromise the harmony between the two nations.

Summing up the situation that has been produced by France's new policy, we find it is as follows: Germany, Austria, Russia, England, Servia and Turkey enjoy the minimum rates under previous agreements. Belgium, Switzerland and Holland have provisional arrangements which may be terminated at any time. Italy, Spain, Portugal and Rumania are subject to the maximum rates. Greece has granted a treaty by which France secures dried currants for wine, and this is the sole certain advantage derived from the new system up to date. France does, indeed, look upon Spain as her certain prey, and has hopes of favors to come from Russia. But on the other hand Austrian trade, shut off from Italian channels, must be diverted to less direct routes and so must inevitably suffer curtailment. On the whole, therefore, the policy of prohibition to imports and free trade to exports seems not to have met with hearty appreciation in Europe. It is useless, however, to expect any change of policy. The late crisis in the French ministry removed M. Guyot, the only free-trader in the cabinet, and the three new members are heartily in sympathy with the existing commercial policy.

Will the home market of France be sufficient to absorb the products of the stimulated industries? It must be remembered that at the present time her population is actually decreasing. The deaths in 1890 exceeded the births by 38,446. Hence a great extension of the home demand cannot be expected in the

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near future. The United States and Russia will take but few of her products, while the food stuffs of both are necessary to her. Italy and Hungary will drive her wines from Central Europe, and California will supplant them in America. She already misses the demand of Italy for her silk goods, while still needing the raw silk with which Italy supplied her until 1888. Her market in Switzerland will be restricted by the new duties there. She cannot expect special concessions from the new *Zollverein* for her jewelry, oils, silks and small wares, since by the terms of the treaties no special favors may be granted by any member. Withal, she must continue to import meats, grains and raw materials, although the consumption of the first may be lessened. Her only resources seem to be her power over Spain, her hope in Russia and her dried currants from Greece. The most serious loss will be in Belgium and Switzerland. It surely seems that this isolation can not last — that France must ultimately reach the position held by Germany to-day; and when she does, the policy of a general European union will appear.

Spain.

In Spain, on the 27th of June, 1891, a commission of the Cortes was appointed to revise the tariff, and the schedule published on January 1, 1892, was the result. Three-fourths of the new minimum duties are higher than the maximum duties of 1882; many rates have been quadrupled, and there is no doubt as to the policy which it is intended to pursue. The duties on spirits are largely increased for revenue purposes. This involves a conflict with Germany, which supplies from one-third to one-half of Spain's total imports of spirits and which is unlikely, therefore, to agree to any treaty that does not provide for a reduction of these duties. Spain, moreover, supplies a large German demand for oils, wines, cork and iron ore, and is much interested in holding this market against the competition of Italy. It would seem to be for the advantage of both Germany and Spain to come to an agreement, and Germany fully intended to include both Spain and Portugal in her treaties. The close financial rela-

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tions of Spain to England and Holland may result in some concessions to them on spirits, in which, of course, Germany must participate. With France there seems at present little probability of peaceful relations, although arrangements from month to month have been tried, pending negotiations. Spain has offered to reduce her minimum rates in return for like favors, but France has refused, feeling confident of final success in any case. The result of these complications is that Spain has had during part of this year a threefold tariff, — a general maximum schedule applied to France, a conventional schedule with England, which expired on June 30, and a minimum for all other countries, which minimum is, however, intended to be prohibitive. The ultimate outcome of Spain's policy of exclusion will probably be the same that has been predicted in the case of France.

Italy.

The situation in Italy is complicated somewhat by her financial condition, which will allow of no reduction of revenue in the revision of her customs duties. With a debt of £600,000,000, involving an annual charge of £24,000,000, it is obvious that reduction of duties must be so effected that the national income shall not be lessened. The Irredentists and Radicals have used this as an argument against the ratification of the German and Austrian treaties, which must result in strengthening the Triple Alliance, but in spite of their opposition the conditions of the treaties have been accepted. In fact, there was nothing else for Italy to do; for since her tariff war with France in 1887–88 she has been practically dependent upon the Austrian and German markets. Especially was this true in regard to her wines, and strenuous attempts were made to hold this market by making the ratification of the treaty dependent upon a reduction of the rates upon wine in Austria and Germany. This was at first refused. But when it was shown that the wines of Italy and those of the North are so different in character that they are not competitors in any market, the coarse, strong wines of Southern Italy being used for mixing with the more delicate flavored products of the North, Austria consented to reduce the rates

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on new wine from ten to four marks, and on wine in casks from twenty-four to twenty marks per 100 kilos, in return for like concessions upon her manufactures; and the treaty was ratified in that form by the Italian Parliament. Italy and Switzerland have also completed an arrangement, which was signed on April 24th, whereby Switzerland admits poultry, swine, grapes and like produce at reduced rates, in return for concessions on her manufactures. It thus appears that Italy has entered into these agreements for her own commercial advantage, and not for political reasons. She is beginning to realize that the attempt to pose as a nation of the first class must have a more secure foundation than the mere form of a political alliance, and that unity of interests is a more permanent basis for peace between nations.

Belgium and Switzerland.

The interests of Belgium and Switzerland appear to favor a free-trade policy; these countries are exchangers rather than producers. But of course they are obliged to follow the policy of their powerful neighbors in many respects. Belgium has leaned toward protection since 1887, and Switzerland showed the same tendency in 1885; but it now seems probable that both will choose the alliance with Germany rather than that with France. There are political reasons of weight which tend to incline Belgium and Germany to each other. Belgium may need German aid to quell internal disorders, and Germany, on the other hand, may some day desire an easy route to Paris, without crossing the bristling frontier of France. There has been, however, some opposition to the proposed treaty from the Belgian manufacturers, who object to the arrangement by which the duties on imports from Germany are to be *ad valorem* while those on exports to her are specific, and claim, moreover, that higher specific duties on woollens are necessary. To this it is answered that Belgian imports less than she exports, and needs a market for her iron and coal. In any case she must choose between France and Germany, and the balance of interest favors the latter. The same general considerations are involved in the case of Switzerland.

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Effect upon the United States.

Finally, what may we expect to be the effect of all these changes upon the trade of the United States? In any case there may result a limitation of the demand for provisions, one of our important exports. When Austria can now supply more of the German market, and France has trebled her rates upon pork, the success of our American diplomacy in behalf of the American hog seems less conspicuous than is sometimes supposed.[1] As to the demand for wheat, this will not be greatly affected in the present state of affairs. Russia was a successful competitor in Germany, but now that her wheat must pay fifty marks a ton, while that from the United States pays but thirty-five, the situation is more favorable to the latter. Nevertheless a closer union of the Danubian states with Italy, Austria and Germany may place us at a decided disadvantage in the future, unless we take care to prevent it. We may be forced to rely upon the English market, and here India, Australia and Canada will all compete with us on equal terms; and if, as France now tacitly assumes, the Spanish market is ultimately hers, there is little hope for us to extend our trade in that direction. Commissioners to teach the German people how to make corn cake are not so necessary for us as a recognition of the equities of international trade.

The real significance of the treaties we have considered lies rather in the possibilities of the future than in the present. May we not expect that the recent movement in France and Spain will run its course as it has in Germany; that all the manufacturing interests of the two nations will cry out for a larger market, just as the distillers of Bordeaux are doing to-day; that the barriers between France and Europe will be broken down, either by a war resulting in commercial agreements like article XI of the Treaty of Frankfort, or, in the absence of such an event, by those great commercial interests which are always opposed to war? Can continental Europe

[1] Exports of pork to France in July, 1891, amounted to $221,540; in July, 1892, $90,790. — *Handels Museum*, Sept. 29, 1892.

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afford to engage in a great war while the United States and England monopolize the markets of South America and Africa? Germany and the league she has formed already realize the significance of this problem, and have insisted upon its importance in all their debates upon these treaties. They see a tendency to a fourfold partitioning of the commerce of the world: the United States trying to monopolize the Americas; England seeking to form a Greater Britain; Russia shutting herself off from the civilized nations; and China withdrawing from sympathy with Europe. They have realized the importance of combination and coöperation to secure for themselves, jointly and severally, a part in the development of trade with the new lands of the earth. France alone, of the great powers of Western Europe, is blind to their common interests; but the new treaties, in the words of Dr. Peez, the Austrian advocate of European union, "are a hand extended to France." There would be for her no real conflict with the rest of Europe. There need be no free trade among the continental nations to effect their ends; but a judicious system of mutual concessions would quickly force outer nations to grant opportunities in the great world's trade in order to preserve their European markets.

To the United States such a policy would be detrimental; but for that very reason it must be kept in mind as a possibility of the future, in order to guard against it. The idea of France and Germany going hand in hand to the people of South America, the one offering small wares, wines and silks, the other coarser fabrics, machinery and spirits, appears perhaps a little absurd. Nevertheless such can be the only permanent solution of the present problem; and if a great European war is inevitable, it may be safely predicted that this commercial alliance will be forced upon the conquered nation. Commerce and a common danger have brought stranger bed-fellows together. And when this comes to pass, will not united Europe be able to put a finger in our Pan-American pie and secure some of the plums for herself? There seems to be a suggestion of this even to-day in the message of President Heureaux to the Dominican Congress, concerning the demands of European

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countries for equal advantages with those conferred upon the United States by the recent reciprocity agreement. He says:

> The first nation that presented itself by means of its consul in the capital seeking such treatment was France; afterwards followed Germany; soon afterwards Great Britain, and last Italy; and this government had reason to think, from the course the negotiations were taking, that the idea of combined action, in order to give unity to such claims, might not be wanting. This conclusion was strengthened by communications which our ministers in Paris and Berlin received from the ministers of foreign affairs of the governments to which they were accredited. . . . As these great powers are the same that have fixed and are able to determine the character of positive international right, it would be ridiculous on our part, a fatal oversight, because we believe ourselves to be in possession of the truth, to resist that which they may decide and are able to sanction as the principle of these times. . . . We shall bend ourselves to the expression of wills so superior and powerful, *etc.*, *etc.*[1]

Finally, may we not expect that the capital which is going from the hoards of Europe for investment, the great army of emigrants who are settling in the new lands, will bring an influence to bear to our disadvantage? The movement for commercial union is growing in favor among the German peoples; M. le Comte de Leusse is agitating the question in France,[2] and it behooves us to take note of it. The time may yet come for a realization of the hopes of the party represented by Dr. Peez, who writes: "May the day be not far distant when the cry of 'Pan-America' may be answered by the echo 'Pan-Europa' from this side of the ocean!" Then we shall indeed be compelled to lower the bars; and we ought at least to recognize the possibility of such a contingency and consider lest we proceed too far on our present course.

WILLIAM Z. RIPLEY.

[1] Despatch to the New York *Tribune*, dated May 4, 1892.

[2] In the *Journal des Économistes* for September, 1892, M. G. de Molinari strikingly depicts the present situation in France, and advocates, as he has so ably done before in that journal, a union of the nations of Central Europe "with France and not against her," as the only solution of her commercial problems.

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THE EARLY HISTORY AND INFLUENCE OF THE OFFICE OF CORONER.[1]

THE early history of the office of coroner has never been satisfactorily investigated. The best text-books of legal and constitutional history begin the consideration of this subject with brief allusions to the origin of the coroner in 1194 and to the curtailment of his functions by *Magna Carta*, and then give various details taken from Bracton, Britton, Fleta and the Statute of 4 Edward I. But these four sources leave many questions unanswered concerning this institution in the second half of the thirteenth century, and no attempt has been made to trace its history before Bracton's time, or carefully to consider its origin. The subject is worth studying, not merely because these gaps ought to be filled up, but also because its investigation may throw some new light upon the early history of trial by jury and of parliamentary representation.

The origin of the coroner's office is usually ascribed to the Articles of the Eyre of 1194.[2] But there is evidence which shows that coroners both of boroughs and of counties existed before this date. In the thirteenth or fourteenth century the citizens of Norwich claimed that they had appointed such officers since the reign of Stephen; but a hostile contemporary

[1] The following contractions are used in the footnotes of this essay:

Bracton. Bracton's De Legibus, edition of the Rolls Series, 1878–83.

Britton. Edited by F. M. Nichols, 1865.

Northumb. Rolls. Three early Assize Rolls of Northumberland. Surtees Society, 1891.

Pl. of Gl. Pleas of the Crown for the County of Gloucester. Edited by F. W. Maitland, 1884.

Rot. Chart. Charter Rolls. Record Commission, 1837.

Rot. Claus. Close Rolls. Record Commission, 1833–44.

Salt Soc. Historical Collections of Staffordshire. Wm. Salt Archæol. Society.

Sel. Pleas. Select Pleas of the Crown. Selden Society, 1888.

Statutes. Statutes of the Realm. Record Commission.

[2] "Preterea in quolibet comitatu eligantur tres milites et unus clericus custodes placitorum coronæ." Stubbs, Select Charters, 260. Stubbs, Maitland, Gneist, Bigelow, Stephen, Palgrave and Reeves all regard this as the origin of the office.

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chronicler denies this, and asserts that Norwich did not have this privilege "for a hundred years and more after the Conquest."[1] Henry I granted to the citizens of London "unum justitiarium quemcunque vel qualem voluerint de seipsis, ad custodiendum placita coronæ meæ et eadem placitandum."[2] Henry II, in 1181, allowed the burgesses of Coventry to elect their own "justitiarius," but the charter does not mention crown pleas.[3] In 1189 the burgesses of Colchester received a grant from Richard I (afterwards confirmed by Henry III), "quod ipsi ponant de seipsis ballivos quoscumque voluerint, et justit[iarios] ad servandum placita coronæ nostræ et ad placitandum eadem placita infra burgum suum."[4] That the charters of Henry I and Richard I to London and Colchester refer to coroners is evident from a comparison of these documents with chapter 20 of the Articles of the Eyre of 1194, with chapter 24 of *Magna Carta*, and especially with the grants of municipal coroners in the reign of John. In John's charters the burgesses are allowed to elect two reeves (*præpositi*), and also four discreet men of the town "ad custodiendum placita coronæ et alia quæ ad nos et coronam nostram pertinent in eadem civitate, et ad videndum quod præpositi illius civitatis juste et legitime tractent tam pauperes quam divites."[5]

[1] Monasticon Anglicanum, IV, 14. The narration is taken from the register of Binham. The same claim of the citizens is entered in the civic records of Norwich. *Archæological Journal*, vol. 46, p. 305.

[2] Rymer, Fœdera, I, 11; Stubbs, Sel. Chart, 108. In the thirteenth century the mayor was *ex officio* coroner and chamberlain, and with him were associated the sheriffs of London. Riley, Memorials, 3; Liber Albus, 83–86, 93, 96, 112; Liber Custumarum, 296; Loftie, London, 29. With them the aldermen of the various wards co-operated. Liber Albus, 52; Liber de Antiquis Legibus, 51. It is possible that already in the time of Henry I the chief magistrate (portreeve) acted as "justitiarius," or coroner. See Norton, London, 60, 275.

[3] Dugdale, Warwickshire, 137; Merewether and Stephens, Boroughs, 338.

[4] Madox, Firma Burgi, 28.

[5] Rot. Chart., 46 (*bis*), 56, 57, 65, 142. In some of the Cinque Ports the coroner, during the thirteenth and fourteenth centuries, seems to have been called a judge. See Lyon, Dover, I, 303. That the "custodes" of John's charters were coroners cannot be doubted. See Gross, Gild Merchant, II, 116, 117. During the first half of Henry III's reign the names "custodes placitorum coronæ" and "coronatores" continued to be used interchangeably. Sel. Pleas, 98, *et pass.*; Bracton, II, 504. The term "coronarii" also was employed in the reign of John. Sel. Pleas, 68–70; Spelman, Gloss., *s.v.* "Furca"; Madox, Exchequer, I, 336; Rot. Chart., 129.

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The evidence concerning the existence of county coroners before 1194 is almost equally conclusive, though confined to a single extract from the Plea Rolls of the King's Court.[1] In November, 1194, Geoffry Fitz-Peter, William de Stuttville and their colleagues, itinerant justices in Lincolnshire, "recorded," or reported, before the justices at Westminster that Hugh de Severbi had accused Alured de Glentham, as principal, and a certain Jordan, as accessory, of killing his brother. Hugh stated that after the commission of the crime the accused had been placed in the custody of the bailiffs of Gerard de Camville, sheriff of Lincolnshire. The coroners (*milites custodientes placita coronæ*), having been called to Westminster, say that at the first county court after the homicide Hugh accused Jordan as principal and Alured as accessory. The sheriff and men of the county confirm the testimony of the coroners. We must try to determine in what year the crime and the session of the county court took place, and when the case was laid before the itinerant justices. Our best clue is the reference to Gerard de Camville, who was sheriff of Lincolnshire from 1189 to 1194, with the exception of a few weeks in 1191.[2] In March, 1194, he was deposed from office by Richard I, and in the following month charges of treason were brought against him.[3] It is wholly improbable that he was restored to office during this reign, for he had been an ardent supporter of John's conspiracy against the crown. Hence Hugh de Severbi must have made his accusation in the county court in presence of the coroners before March 31, 1194, and hence before September, 1194, in which latter month the Articles of the Eyre were issued. It is probable, though not certain, that the accusation was made in 1189 or 1190; for in 1 Richard I both Geoffry Fitz-Peter and William de Stuttville acted as itinerant justices,[4] and they may have tried the case of Hugh *vs.* Alured and Jordan in the eyre of that year.

[1] Rotuli Curiæ Regis (ed. Palgrave), I, 50, 51.

[2] Hoveden (ed. Stubbs), III, pp. xxix, lvi, 134, 137; Foss, Judges, II, 48. He was made sheriff by Richard soon after the latter's coronation.

[3] Hoveden, III, 241–243.

[4] Foss, Judges, I, 335.

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On the other hand, coroners are not mentioned in Glanvill or in the printed Pipe Rolls of 2–15 Henry II. The silence of the former is more eloquent than that of the latter, but it may be due to the fact that the coroner's functions were not yet as extensive as they became in the next century, and hence that Glanvill, in his meagre account of criminal procedure, had no occasion to refer to the office. Even after 1194 such records as the *Rotuli Curiæ Regis* rarely mention coroners during the reign of Richard I.[1]

Some writers have ascribed their origin to the Anglo-Saxon period.[2] This view is improbable because the power of the royal judicature and the idea of crown pleas were not yet fully developed under the Anglo-Saxon kings. As the jurisdiction of the *Curia Regis* gradually increased and that of the local public courts diminished in the century following the Norman Conquest, the king's peace was extended, the category of crown pleas was enlarged,[3] and hence new agents were needed to see that criminals were brought to trial before the itinerant justices. The coroner was, in fact, an important concomitant of the eyre system; the latter needed the active co-operation of the former. Both existed primarily for the king's profit,[4] both were useful agents of a highly centralized government. The development of coroners may thus have been contemporary with that of the itinerant justices; both offices, perhaps, were tentatively employed under Henry I, fell in abeyance under Stephen, and were firmly established under Henry II. Moreover,

[1] The reference to coroners in the case of Hugh de Severbi is, in fact, the only one that I can find in the printed Plea Rolls of Richard's reign.

[2] Forsyth, Trial by Jury, 225; Coke, Second Institute, 31, who cites Mirror, ch. 1, § 3; Blackstone (ed. Sharswood), IV, 413. The evidence of the Mirror is as unreliable as that of the rhyming charter of Athelstan to the monks of Beverley, which contains the line: "Nan oyer coroner have ye might." Monasticon Anglic., II, 130; Birch, Cartularium Saxonicum, II, 322.

[3] Stubbs, Const. Hist., §§ 72, 73, 128, 163; Bigelow, Procedure, 75–85; Pollock, Oxford Lectures, 86; Maitland, Manor. Pleas, pp. liii, liv.

[4] The coroner was expected to seek diligently for the forfeited chattels of felons, for deodands, wreck and treasure-trove. See Britton, I, pp. xxxi, 11–18; Statute 4 Edw. I; Abbreviatio Originalium, I, 18; Placita de quo Warranto, 114. *Cf.* Gneist, Self-government, 183, 184.

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Henry II aimed to curtail the authority of the sheriffs.[1] Some of their functions ultimately passed to the coroners, and the latter acted as a check on the former.[2] The rise of the coroner seems to imply a corresponding depression of the sheriff; hence the establishment of the new office may have been the result of Henry II's policy of reducing the power of the sheriffs, consolidating the king's peace and centring the administration of justice in the itinerant justices and the *Curia Regis*. Whether this hypothesis is tenable or not, it is evident that chapter 20 of the Articles of 1194 is merely a declaratory act, referring to an institution which was already in existence.

In the reigns of Henry III and Edward I there were generally four coroners in each county,[3] but in some cases only two.[4] They were elected in the county court "with the assent of the whole county." The writ *de coronatore eligendo* was the same in the first quarter of the thirteenth century as under Edward I and his successors. The newly elected coroner took his oath of office (*ad custodienda ea quæ pertinent ad coronam*) before the sheriff, who afterwards sent his name to the king.[5] The main qualifications for the office throughout the thirteenth century were knighthood and residence in the same county.[6] Its tenure

[1] Stubbs, Const. Hist., § 163.

[2] See below, p. 664.

[3] Pl. of Gl., 97; Rot. Claus., I, 402, 622, 648 (*cf. ibid.*, I, 463, 506, II, 91, 105, 119, 126); Bracton, II, 430; Salt Soc., IV, 73, 208, 215, V, 121, VI, pt. i, 256; Northumb. Rolls, 372 (*cf. ibid.*, 68, where only three coroners are mentioned).

[4] Rot. Claus., II, 67 (Devon); Abbrev. Placit., 55 (Leicester); *cf.* Bracton, II, 430.

[5] For the mode of election, oath, *etc.*, see Rot. Claus., I, 366, 368, 402, 409, 414, 419 (*bis*), 463, 506, 560, 622, 648, II, 67, 91, 105, 119, 121, 126; Cooper, Records, I, 421; Britton, I, 8. In a few cases the king seems to have appointed the coroner. Rot. Claus., I, 560. For the writ of election in the reign of Edw. I and later, see Statutes, I, 62; Reg. Brevium, 177; Fitzherbert, Natura Brevium, 163.

[6] Henry III generally orders the sheriff to cause knights to be elected. See the references to Rot. Claus. in the preceding note. *Cf.* Statutes, I, 2, 29. As to the qualification of residence, see Rot. Claus., I, 419. The "*clericus*" of Richard I's enactment (Stubbs, Sel. Ch., 260) may, perhaps, have been simply a clerk or scribe of the knights. Such assistants are mentioned under Henry III and Edw. I. Rot. Hund., I, 112, 130, 198; Plac. quo War., 309, 421; Salt Soc., IV, 215; Britton, I, 54; Fleta, I, ch. 18.

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was for life or during good behavior.[1] Coroners enjoyed certain privileges, such as exemption from ordinary jury service and from attendance at the hundred and county courts outside of their own shires.[2]

Many boroughs had their own coroners, who varied in number from one to four; in the reign of John there were usually four, later generally two.[3] They were elected by the civic community, or whole body of burgesses,[4] and were commonly sworn into office in the shire court by the sheriff or justices itinerant.[5] Their tenure was the same as that of county coroners.[6] Any burgher was eligible to the office.[7] The privilege of having such officers was a stage in the process of growth by which the

[1] In the Close Rolls the new election is often said to be due to death, illness or inefficiency. See also Northumb. Rolls, 68; Eyton, Shrop., IV, 118. In 1221 a coroner paid a fine to be removed from his office. Pl. of Gl., 109.

[2] "Coronatores quieti debent esse de assisis et sectis comitatus et hundredorum in aliis comitatibus quam in illis in quibus fuerint coronatores." Rot. Claus., I, 423. "Nullus coronator poni debet in assisis, juratis vel recognitionibus, quamdiu fuerit coronator." *Ibid.*, II, 191.

[3] Four are mentioned in Rot. Chart., 46 (*bis*), 56, 57, 65; Hartshorne, Northampton, 35, 42; Madox, Firma Burgi, 133; Pl. of Gl., 117; Merewether and Stephens, 392. Two are referred to in Sel. Pleas, 98; Merewether and Stephens, 466; Northumb. Rolls, 367; Hedges, Wallingford, I, 359–62; Chartæ Hiberniæ, 20; Eyton, Shrop., XI, 137; English Gilds, 350; Swinden, Yarm., 262; Charters of Salisbury (Rolls Series), 342; Plac. quo War., 18. At Oxford in 1285 there were four, and a few years later only two; there were also four for the suburbs. Rogers, Documents, 147–168, 194, 217–223. At Shrewsbury, under John, the number was changed from four to two. Rot. Chart., 46, 142. At Ipswich a similar change seems to have taken place in the reign of Edw. I or Edw. II. Wodderspoon, Ipsw., 86; Bacon, Annals, 13, 16, 41, 47. In some boroughs there appears to have been only one coroner. Northumb. Rolls, 331; Salt Soc., IV, 73; Plac. quo War., 159. There were boroughs without a separate coroner. A special grant from the king was necessary for the exercise of this privilege. Plac. quo War., 18, 138, 629.

[4] Gross, Gild Merch., II, 116, 117; Rot. Chart., 46 (*bis*), 56, 57, 65, 142; Madox, Firma Burgi, 133.

[5] Rot. Claus., I, 364; Chartæ Hiberniæ, 20; Plac. quo War., 159; English Gilds, 350. The coroners of Newcastle, according to Henry III's charter, were to take the oath before the mayor and bailiffs in full [borough] court. Brand, Newc., II, 141. In the year 1200 the coroners of Ipswich took the oath before the town community in the borough. Gross, Gild Merch., II, 116, 117.

[6] Hist. MSS. Com., VI, 583; Rogers, Documents, 147; Plac. quo War., 159; Chartæ Hibern., 20; Rot. Chart., 45, 46.

[7] The early borough charters refer to "legales homines de burgo," not to "milites." In Rot. Claus., I, 364, "milites" are mentioned, but this looks like a slip of the scribe's pen. *Cf.* Rot. Chart., 56.

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borough administration was separated from that of the county. In manors which had their own coroners, the office was probably not elective, but was filled and held at the will of the lord.[1]

Returning to the county coroners, to whom we must mainly confine our attention, let us consider their functions. The main point to be emphasized in this connection is their wide sphere of activity, in both the first and the second half of the thirteenth century. Their duties were not confined to cases of sudden or violent death, but extended to a wide range of criminal matters and even to civil pleas. They were the principal agents in bringing all sorts of criminals to justice. They held inquests in cases of sudden or unnatural death, serious bodily injury, burglary, arson, rape, prison-breaking and concealment of treasure-trove or wreck. Englishry was presented, when necessary, at these inquests.[2] Persons declared guilty by the jury, and those who were present when the crime was committed or when the accident happened, as well as the finders of the body and sometimes the nearest neighbors,[3] were all either arrested or attached to appear at the trial before the itinerant justices. The coroners also received the declarations of approvers, and heard "appeals," or criminal accusations of one person against another, the final trial being reserved for the eyre. They kept, moreover, a record of outlawries, and received the confession and the abjuration oath of felons who had fled to sanctuary.[4] These various functions are mentioned in the reigns of John

[1] Plac. quo War., 24, 112, 222; Memorials of Ripon, I, 68. *Cf.* Statute 28 Edw. III, c. 6; Hale, Pleas of Crown, II, 53. But in some cases even seignorial coroners were elected. See Furness Coucher Book, 159, 166 (Edw. III).

[2] For such presentments of Englishry before the coroner, see Bracton, II, 391; Britton, I, 16, 17; Fleta, I, ch. 30; Statutes, I, 58; Pl. of Gl., 57.

[3] The finders of a body were not attached if the deceased had received the rites of the church before death, perhaps because he would then have had an opportunity to exonerate them. This explains the words "habuit jura ecclesiastica" in the coroner's rolls. See Rogers, Documents, 171–174; Year Books, 30–31 Edw. I, 522. As to the attachment of neighbors, see Riley, Memorials of London, 4–20; Norfolk Archæology, II, 263; *cf.* Hist. MSS. Com., IX, pt. i, 226.

[4] The old oath used at Colchester is printed in Norfolk Archæology, VII, 266, and in Harrod's Records of Colch., 32.

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and Henry III,[1] are clearly set forth in Bracton, Britton, Fleta, the Statute of 4 Edward I, the *Statutum Walliæ* (1284) and the *Statutum Exoniæ*,[2] and are described in detail in the ordinary text-books of legal history.

To these duties, which by themselves amply testify to the importance of the office, others are to be added concerning which the information in the above-mentioned sources is quite meagre. We may infer from the early town charters and from *Magna Carta*, chapter 24, that before 1215 these officers tried criminal pleas (*placita coronæ*); and even after that date they passed judgment on felons caught in the act.[3] Moreover, before and after 1215 they often conducted jury trials in ordinary civil pleas, either taking the place of the sheriff or, more commonly, associated with him.[4] In the county court their position and activity were not much inferior to his.[5] They also, with or without the sheriff, sometimes convened the hundred for judicial business, and even held the sheriff's tourn.[6] They were, further-

[1] For the coroner's functions in the reigns of John and Henry III, see Rot. Curiæ Regis, I, 51, 418; Sel. Pleas, 3, 9–19, 28, 33, 45, 63–70, 84, 88, 100–117; Pl. of Gl., 4, 15, 20–47, 55–78, 94–115; Rot. Claus., I, 432, 617, 641, II, 28, 31, 51; Bracton, II, 280–90, 388–90, 394–96, 424–32, 510, 522; Bracton's Note Book, II, 117, 402, 650, III, 131; Statutes, I, 11, 25; Stubbs, Sel. Ch., 384–85; Northumb. Rolls, 71–86, 96–107, 117–125; Salt Soc., III, 91, 95, IV, 71, 73, 214, 215; Liber Albus, 83–96, 112; Norfolk Archæol., II, 253–79. For the reign of Edw. I, see Britton, I, 8–18, 54, 62–67, 79, 110–112, 134, 135; Fleta, I, ch. 25; Statutes, I, 28, 29, 40, 41, 56–59, 210–12; Year Books, 30–31 Edw. I, 496–544; Plac. quo War., 170, 222, 309, 603; Northumb. Rolls, 315–367; Salt Soc., VI, pt. i, 127, 257–275; Monast. Anglic., II, 447; Memorials of Ripon, I, 68–71; Rogers, Documents, 150–177, 195–219; Riley, Memorials, 3–20; Rot. Hund., I, 56, 313, II, 187, 308, 313. These references show that the Statute of 4 Edw. I is a declaratory act, and that it does not mention all the important functions of the coroner.

[2] This undated statute seems to belong to the reign of Edw. I; it appears to have been used by Fleta, I, ch. 18.

[3] Britton, I, 37, 56.

[4] Bracton's Note Book, II, 277, 389, 420, 425, 452, 466, 516, 571, 572, 627, 675, 682, III, 151, 155, 228, 264, 473; Statutes, I, 2, 23; Salt Soc., IV, 84, 95, 97; Monast. Anglic., VI, 2; Memorials of Ripon, I, 56; Abbrev. Placit., 260; Records of Nottingham, I, 47. *Cf.* Northumb. Rolls, 195; Bracton's Note Book, III, 57, 489; Salt Soc., VI, pt. i, 30; Liber Albus, 187.

[5] Britton, I, 54, 110–12, 135; Bracton, II, 540, 542; Stubbs, Sel. Ch., 362; Statutes, I, 56; Pl. of Gl., 102; Northumb. Rolls, 105, 117, 315; Sel. Pleas, 70; Maitland, Court Baron, 89, 90. *Cf.* Palgrave, Merchant and Friar, 54.

[6] Sel. Pleas, 68–70, 117; Northumb. Rolls, 164; Furness Coucher Book, 135–136; Plac. quo War., 371. *Cf. ibid.*, 138, 629; Shirley, Letters, I, 451.

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more, occasionally employed by the crown to transact purely ministerial or administrative business, assisting or superseding the sheriff.[1] In default of the sheriff, or if he was a party in a suit, royal writs were regularly executed by the coroners.[2]

Indeed, throughout the thirteenth century, the latter acted as a check on the former.[3] In criminal matters their rolls had more authority than his.[4] The elected officers of the county thus gained power at the expense of the appointed agent of the king, especially in connection with the administration of justice. The coroner, the representative not merely of the king but also of the people, owing his position to the suffrage of the community and belonging to that community, was less liable to be oppressive and obnoxious to the people than the sheriff, who often bought his appointment from the crown, frequently lived in some other county, and generally regarded his office as an instrument of private gain. Hence, in the Hundred Rolls of Edward I's reign, serious complaints against the *coronatores* on account of bribery and oppression are less numerous than those against the *vicecomites*.[5] By transferring power from the latter to the former and by placing the coroner's election in the hands of the people, the king diminished their grievances and at the same time made them responsible for the proper exercise of this office.[6] We must, however, be careful not to exaggerate the coroner's function as controller of the chief officer of the

[1] Rot. Claus., I, 437 (*bis*), 622, 648; Plac. quo War., 228, 792.

[2] Bracton, I, 596; Britton, II, 71; Bracton's Note Book, III, 55, 57, 489; Plac. quo War., 685; Abbrev. Plac., 260, 294, 312, 314; Madox, Exch., II, 238; Memorials of Ripon, I, 56. *Cf.* Year Books, 14 Edw. III, 36, 238, 307.

[3] Pl. of Gl., p. xxxiii; Salt Soc., VI, pt. i, 30; Stubbs, Const. Hist., §§ 150, 163, 206, and Sel. Ch., 291.

[4] Bracton, II, 430. The Statute of Westminster, I, c. 10, regarding the rolls of the coroners and of the sheriff, is merely declaratory of what existed under John and Henry III. See Sel. Pleas, 28; Salt Soc., III, 91.

[5] *Cf.* Northumb. Rolls, p. xx; Riess, Wahlrecht, 3–5; Prothero, Simon de Montfort, 162, 300; Bémont, Simon de Montfort, 132–134.

[6] A record of 6 Edw. II, describing the opening of the eyre, states that concerning coroners elected by the county who are dead and have no property, all the said county is charged to answer before the justices for their official acts during their term of office. Year Books, 30–31 Edw. I, p. lvii. In 14 Edw. III a county, "ut elector et superior," was held responsible for the fine of a coroner who had no property. Coke, Second Inst., 175.

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shire; for both offices might be held by the same person[1] (though probably this did not often happen), and, in the reign of Edward I, Britton seems to have regarded the sheriff as a check on the coroner, or the two as counter-checks on each other.[2]

In boroughs the relation of the coroners to the chief municipal officer or officers (reeve, mayor or bailiffs) was similar to that of the county coroners to the sheriff. In the early borough charters the *custodes placitorum coronæ* are said to be elected "ad videndum quod præpositi juste et legitime tractent tam pauperes quam divites."[3] Hence the former were generally associated with the latter in the hearing of criminal pleas and sometimes in the administrative work of the borough.[4] Coroner's inquests were held with or without the chief civic officer.[5] In a few boroughs the two offices were united.[6]

Next, the functions of the coroner in the eyre are to be noted. Here he is a very prominent figure — an important link between the itinerant justices and local administration, and hence between the crown and the people. Whether he was coroner of the county or of a franchised district, his presence at the eyre was almost indispensable, and was enforced under severe penalties.[7] At the opening of the eyre the justices received all coroners' rolls in use since the last circuit, and sealed them, probably to prevent alterations in the records during the proceedings of the

[1] Northumb. Rolls, 68; Salt Soc., IV, 71.

[2] "Viscounte . . . soit soen countreroullour en tut soen office." Britton, I, 17. The construction of the sentence is somewhat obscure; perhaps Britton meant to say that the coroner was the controller of the sheriff. *Cf.* Statutes, I, 29, 56.

[3] Rot. Chart., 46 (*bis*), 56, 57, 65, 142.

[4] Records of Nottingham, I, 66; Gross, Gild Merch., II, 116–122; Bacon, Annals of Ipsw., 18, 28; Domesday of Ipsw., 20, 50–53, 96–99; Plac. quo War., 18; Archæol. Journal, XLVI, 314; Swinden, Yarm., 261; *cf.* Liber Albus, 187.

[5] Norfolk Archæology, II, 259; Winch. vol. of the Brit. Archæol. Assoc., 81; Riley, Memorials, 3–20; Hedges, Wallingford, I, 359–362; Hist. MSS. Com., VI, 505, 583–584; Rogers, Documents, 150–176.

[6] Gilbert, Dublin Records, I, 155, 226; above, p. 657, n. 2. This seems to have been the case in all the Cinque Ports. See Lyon, Dover, II, 269, 303, 314, 347, 371.

[7] "As to the coroners who did not come, the sheriff was ordered to go to their houses and turn out their wives and children, and to take their lands into the king's hands until they should come." Year Books, 30–31 Edw. I, 75–77; *cf. ibid.*, pp. lvi, lvii.

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court.[1] In the trial of criminal pleas the itinerant justices often had recourse to the testimony of the coroners or of their rolls.[2] These records, which had great authority,[3] supplemented, checked or corrected the presentments of the hundred juries,[4] and thus tended to insure the trial of all felons. They also indicated defects in the administration of justice in shire, hundred and township, in connection with appeals of felony, outlawries, the custody of prisoners, hue and cry, *etc.*[5] Then, too, the judges, during the sessions of the eyre, made use of the coroners in connection with civil pleas, ordering them to see whether the essoinees were acting in good faith,[6] to summon parties in a suit, to empanel a jury for the trial of some issue or for the making of a record of proceedings in the county court.[7]

The coroners bound together central and local government in still another way. They linked the manorial to the royal jurisdiction, for their presence was necessary in privileged baronial courts when felonies were attached or tried. When a criminal was caught red-handed, or with the mainour, in the district of a

[1] Britton, I, 23; Year Books, 30–31 Edw. I, pp. lvi, lvii, 75; Liber Cust., 295, 296; Rogers, Documents, 183; Plac. quo War., 25, 309; *cf.* Fleta, I, chap. 18.

[2] Sel. Pleas, 3, 9–19, 28, 33, 84, 88, 103, 107, 117; Pl. of Gl., 7, 11, 20–28, 32, 39, 55, 57, 62, 78, 94–102, 109, 115; Northumb. Rolls, 70, 78, 79, 105, 117, 315, 346; Salt Soc., III, 91, 95, VI, pt. i, 261–263, 274; Bracton's Note Book, II, 117, III, 407, 678; Year Books, 30–31 Edw. I, 496, 518; Rogers, Documents, 201, 204. The rolls are first mentioned early in John's reign.

[3] For their authority and value, see Bracton, II, 427–430; Britton, I, 18, 111, 112, 135; Plac. quo War., 18; Year Books, 30–31 Edw. I, 503, 543, 544; Sel. Pleas, 28; Norfolk Archæology, II, 259, 260; *cf.* Staunford, Plees del Coron, 51, 52. The coroners were severely punished for alterations or errors in their rolls. Pl. of Gl., 62; Salt Soc., IV, 215; Britton, I, 14; Fleta, I, chap. 25; Plac. quo War., 421. Many old rolls of county coroners (Edw. I, *etc.*) are preserved in the Public Record Office. See Scargill-Bird, Guide to Documents, 64. Some of the early rolls of borough coroners (Henry III–Edw. III) are still extant in Norwich, London, Leicester, Wallingford, Oxford, Faversham, Ipswich, *etc.* Hist. MSS. Com., I, 104, III, 318, VI, 508, 509, 582, 584, VIII, pt. i, 411, IX, pt. i, 226, 227. Extracts from those of Norwich, London and Oxford (Hen. III–Edw. II) have been printed in Norfolk Archæology, II, 253–279; Riley, Memorials, 3–20; Rogers, Documents, 150, 174.

[4] Pl. of Gl., 7, 29, 55, 57, 96, 101; Sel. Pleas, 28, 33. The jury also acted as a check on the coroners. Pl. of Gl., 62; Northumb. Rolls, 313; Salt Soc., IV, 73; Rogers, Documents, 202, 203.

[5] See above, n. 2.

[6] Bracton, V, 317; Bracton's Note Book, III, 55.

[7] See above, p. 663, n. 4; p. 664, n. 2; and *cf.* Abbrev. Placit., 55.

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seigneur who had infangthef, the penalty of death could be lawfully inflicted only in the presence of a coroner.[1] Some manors had coroners of their own,[2] but this privilege does not seem to have been very common in the thirteenth century. The crown was seemingly more reluctant to grant this right to manors than to boroughs, probably because the lords were more likely to withhold the forfeited chattels of felons and in general to usurp the royal prerogatives.[3] Manorial coroners were responsible to no body of electors, but, in the first instance, only to the seigneur, whom they would naturally serve more faithfully than the crown. Hence the king preferred to have the county coroners act as a medium between him and the manors. It was their function to protect the royal rights and profits against the lords, lay and spiritual, in all matters relating to crown pleas. They could enter franchised places from which the sheriff was ordinarily excluded[4] — a fact which confirms the conclusion that they gained power at his expense. Thus the coroners, like the itinerant justices, tended to bring or keep the seignorial jurisdictions under royal control, and to check the growth of feudalism.

Having indicated the functions and importance of this institution in the thirteenth century, let us now examine more carefully the coroner's jury and the mode of his election, both of which exerted some influence upon other institutions.

"Inquest" (*inquisitio*) is an interesting survival of a word which is associated with the birth of a new system of procedure,

[1] Plac. quo War., 121, 125, 148, 170, 217, 309, 334, 335, 603, 759; Sel. Pleas, 84, 117; Furness Coucher Book, 133; Spelman, Gloss., *s.v.* "Furca"; Monast. Anglic., II, 447; Britton, I, 18, 37, 56; Year Books, 30–31 Edw. I, 502; Salt Soc., IV, 214. *Cf.* Bracton, II, 540–542.

[2] Plac. quo War., 24, 25, 112–114, 197, 222–224, 334, 335, 593, 604, 778 (*cf. ibid.*, 73, 74, 305, 332, 340, 421, 675); Monast. Anglic., II, 130; Memorials of Ripon, I, 52, 57, 68, 69; Furness Coucher Book, 157–159, 165, 166; Blomefield, Norfolk, III, 49, 52; Gross, Gild Merch., II, 48, 365; Rot. Hund., I, 119, 120, II, 169, 280.

[3] *Cf.* Plac. quo War., 114, where complaint is made that the coroners of a lord and those of his ancestors had concealed such chattels. The king's distrust of manorial coroners is also shown by the frequent inquiry whether they had taken the oath of office. See *ibid.*, 24, 113, 222.

[4] Plac. quo War., 121, 125, 148, 603; Furness Coucher Book, 133; Rot. Chart., 129; Bracton's Note Book, II, 55. *Cf.* Bracton, II, 540, 542; Maitland, Manor. Pleas, p. xxvi.

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and which in mediæval England was a common generic term applicable to all forms of the jury, whether used for judicial or administrative purposes. The composition of the coroner's inquest jury in the thirteenth century varied somewhat in different localities and at different times. Most commonly it seems to have consisted of a representation from "the four neighboring townships (*villatæ*)," *i.e.* that in which the body was found or in which the crime was committed, and the three nearest vills.[1] The number of persons from each *villata* was indeterminate, varying according to circumstances; the coroner probably summoned as many as he deemed sufficient for the inquest.[2] At Oxford in 1297–1307 from twenty-two to thirty persons served on the jury — an average of about six representatives from each parish.[3] In the same reign juries of twelve, thirteen, fifteen and twenty-one are mentioned at Wallingford.[4] Sometimes the hundred or borough, as well as the townships or parishes, was represented.[5]

The activity of the four townships was not confined to such jury service. Other communal duties and responsibilities were often imposed upon them collectively, in connection with criminal administration. They were expected to join in the hue and

[1] Stubbs, Sel. Ch., 384, 385; Salt Soc., IV, 211–214; Rogers, Doc., 150–174; Northumb. Rolls, 93–100, 107, 110, 111, 314, 318, 320; Harrod, Colch. Records, 33; Rot. Hund., II, 308; Norfolk Archæol., II, 260–267; Maitland, Court Baron, 90; Hist. MSS. Com., VI, 583. *Cf. ibid.*, IX, pt. i, 226; Bracton, II, 504; Year Books, 30–31 Edw. I, 525, 545; Shirley, Letters, I, 451; Statutes, I, 56. Bracton (II, 281) and the Statute of 4 Edw. I say that the jurors were to be taken from four, five or six townships; Britton, I, 9, and Fleta, I, ch. 25, say from four or more. Five are referred to in Statutes, I, 56, 58; *cf.* Rot. Claus., II, 51. In 1272–1278, generally two or three wards of London are represented on the jury. Riley, Memorials, 3–20.

[2] The Provisions of Westminster, ch. 24, require the presence of a number sufficient to make the inquest. *Cf.* Britton, I, 10; Shirley, Letters, I, 451. The Statute of Marlborough, ch. 24, and the Statutum Walliæ, ch. 5, state that all of twelve years of age or older ought to appear in inquests concerning death, unless they are excused.

[3] Rogers, Doc., 150–168.

[4] Hist. MSS. Com., VI, 583. *Cf. ibid.*, IX, pt. i, 226; Rot. Claus., II, 51 (the reeve and four men from each of five vills); Bracton, II, 504 (reeve and six men from each of four vills). In 1305 the king ordered inquiry to be made whether coroners put poor people on juries and spared the rich. Archæologia, XL, 96, 97, 103.

[5] Sel. Pleas, 23, 117; Bracton, II, 244. *Cf.* Hist. MSS. Com., IX, pt. i, 226; Plac. quo War., 138 (*bis*), 629.

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cry, to watch a culprit who had fled to sanctuary, to take charge of a felon's land and chattels, to appraise the value of his property and of deodands, and to hold the body of a person slain or killed by accident until the coming of the coroner.[1] They also, singly or collectively, presented felonies in the hundred and shire courts.[2]

These details throw some light upon the relation of the four townships to the twelve *juratores* of the hundred, who at the eyre presented and also tried persons accused of crime.[3] This relation has been pointed out by Professor Maitland in his very suggestive introduction to the Pleas of Gloucester.[4] He rightly remarks that "the history of the petty jury is still in MS." He is inclined to seek its germ in the *quatuor villatæ*;[5] their representatives "became a second body of witnesses who could traverse the testimony of the hundred jury."

This theory seems plausible, but it should perhaps be slightly modified by connecting the origin of the traverse or trial jury with a specific class of cases, namely, appeals of felony. Before

[1] Northumb. Rolls, 98, 100, 107, 110, 115, 119, 317, 318, 320, 341, 345; Sel. Pleas, 86; Statutes, I, 40, 41, 58, 59; Britton, I, 11, 16, 17, 45; Norfolk Archæol., VII, 266; Pl. of Gl., 41; Rot. Hund., II, 306. *Cf.* Bracton, II, 284; Year Books, 30–31 Edw. I, 525, 545; *Revue Historique*, L, 15. To repair bridges was another of their duties. Maitland, Court Baron, 88.

[2] Shirley, Letters, I, 451; Statutes, I, 56; Pl. of Gl., 15; Sel. Pleas, 100; Maitland, Manor. Pleas, pp. xxix, xxx; Bracton's Note Book, III, 424; Maitland, Court Baron, 73, 88; Rot. Hund., II, 29, 308, 313.

[3] There seems to be little doubt that the same jury of the hundred which presented a person also generally tried him. See Pl. of Gl., p. xliii; Palgrave, Commonw., II, 188; Salt Soc., VI, pt. i, 259, 274, 279, *et pass.*

[4] Pl. of Gl., pp. xlii–xliv. For other examples of the *villatæ* used in connection with the petty jury in the trial of persons presented by the *fama publica*, see *ibid.*, 92, 98; Sel. Pleas, 105, 116, 117 (*bis*), 119, 125–127; Bracton's Note Book, II, 115, 116, 634, III, 407; Northumb. Rolls, 94, 101, 104, 115, 121, 123, 350; Palgrave, Commonw., II, 186-188; Salt Soc., IV, 69, 71, VI, pt. i, 259, 269, 274, 279, 283, 284. Some of these cases are preliminary examinations rather than formal trials, which last were dispensed with when there was strong evidence against the accused. Recourse was sometimes had to the jurors of the neighboring hundred or hundreds or counties, instead of the neighboring townships, or to both hundreds and townships combined. See Pl. of Gl., p. xlii; Sel. Pleas, 7, 8, 116, 119; Bracton's Note Book, II, 115.

[5] Four vills are usually referred to, but the numbers three and five are often mentioned in connection with the jury service and the other communal functions of the townships.

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and after the abolition of the ordeal (*circa* 1219), for which the petty jury was substituted, the appellee was often tried by a jury instead of wager of battle. When such an appeal was presented by the jurors of the hundred, the neighboring vills were sometimes asked for their testimony, and on this testimony the accused might be declared innocent or guilty.[1] In such appeals and in trials resulting from ordinary presentments by the public voice, the four townships often appear to be regarded as a body distinct from the accusing *juratores* — a body, in fact, which virtually decides the case like the later petty jury.

The neighboring vills were sometimes also employed in connection with the presentment jury in making accusations, and in such cases much weight was attached to their testimony.[2] The *villatæ* were probably not a regular part of either the accusing or the trial jury, but were called upon in certain emergencies to add their knowledge of the facts to that of the *juratores*, seemingly when the latter were in doubt or when the court deemed it expedient that they should be afforced. When such use was made of the vills, their declaration was generally accepted by the court as a decisive verdict. The number of persons from each of the four townships added in this way to the hundred jury is rarely stated in the printed sources, but would naturally be the reeve and four men who usually appeared at the eyre to represent the township.[3]

[1] Pl. of Gl., 29; Sel. Pleas, 66, 103, 106; Palgrave, Commonw., II, 185; Bracton's Note Book, II, 406, 425 (*bis*), 457, III, 471; Salt Soc., VI, pt. i, 259.

[2] Sel. Pleas, 3–5, 26, 117; Northumb. Rolls, 126, 350; Palgrave, Commonw., II, 186; Bracton's Note Book, III, 538; Pl. of Gl., 5, 7, 46, 53, 55, 96, 101; Salt Soc., III, 42, IV, 71; Bracton, II, 537. Most of these cases are clear; but some of them may refer to indictments by vills in the hundred or county courts. The vills made presentments at the eyre in the time of Henry II, according to the Assize of Northampton. Stubbs, Sel. Ch., 151. Maitland describes how the *villatæ* co-operated with the hundred jury in the presentments of the sheriff's tourn. Manor. Pleas, p. xxix.

[3] Rot. Claus., I, 380, 403, 473, 476; Bracton, II, 189; Britton, I, 19; Stubbs, Sel. Ch., 358, and Const. Hist., § 163. According to the Assize of Northampton four from each vill made presentments at the eyre. In 1220 eight men from each of four vills decided a suit, but they were specially summoned before the Justices of the King's Bench. Sel. Pleas, 125–127. In 1223, "de qualibet villata sex" were called to Westminster. Bracton's Note Book, III, 471; *cf.* Year Books, 30–31 Edw. I, 76.

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This activity of the neighboring *villatæ* in criminal pleas[1] may be largely due to the fact that the townships had already, in most cases, made a careful investigation of the offence in connection with the coroner's inquest, and hence would have more exact knowledge of the facts than the hundred jury. The same four vills that made the preliminary inquiry before the coroner would often participate in the final trial before the justices. In like manner, the coroner himself was sometimes requested by the justices to give evidence,[2] which must often have modified the verdict.

There is another way in which the coroner's inquest may have influenced the growth of the petty jury. From the very nature of the inquiries made at the inquest, we may conjecture that evidence of persons not on the jury was taken. Britton (I, 10) says: "If there is need of further inquiry, and that by others, let inquiry be made again and again." The testimony of the next of kin was secured. The finders, neighbors and companions of the deceased were summoned, and perhaps subjected to cross-examination.[3] The facts so ascertained were entered in the *rotuli coronatoris* for use before the itinerant justices. Thus in the coroner's jury there seems to have been a nearer approach to the determination of truth from the evidence of witnesses than in the early petty jury, whose verdict was based on previous knowledge of facts. The evidence produced at the inquest would generally be known to the representatives of the townships and, when they acted in conjunction with the petty jury, would have weight in the final trial. Hence the coroner's jury may be regarded as one of the links uniting the old system of procedure to the modern custom of deciding matters upon the evidence of witnesses openly examined in court.

One more phase of our subject deserves attention, *i.e.* the

[1] In the printed rolls of the thirteenth century the four vills do not seem to be used on juries in civil suits. For a later example of this, see Year Books, 14 Edw. III, 302.

[2] Pl. of Gl., 11, 98; Bracton's Note Book, II, 117; Northumb. Rolls, 78. *Cf.* above, p. 666, n. 2.

[3] For presentment of Englishry, attachment of finders, *etc.*, see above, p. 662.

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influence of this office upon the principle of representation. The coroner's jury, like all other kinds of juries, was itself a representative body, and its frequent use makes it a conspicuous example of early representation for local purposes. The growth of this principle and its extension to Parliament have been fully considered by such writers as Stubbs and Gneist. I wish here to call attention to the mode of the coroner's election and its bearing upon representation. Throughout the thirteenth century it was the custom, as I have already shown, to elect the county coroners in the full shire court "with the assent of the whole county." There were four or two coroners for each county, and they were knights. Here we have an exact counterpart of the earliest parliamentary knights of the shire, who in the reign of Henry III were two or four in number, and were chosen in the county court.[1] The machinery for the election of coroners seems to have been the mould which shaped the representation of the shires in Parliament; the coroners were prototypes of the parliamentary knights of the shire. Elected knights of the shire were also employed for other local purposes,[2] but in a more casual or transitory way than in the case of the coroner. This latter office was a permanent institution, which must have helped to habituate the nation to the idea of county representation.

These remarks concerning the influence of the coroner's office upon the petty jury and upon parliamentary representation are intended merely as suggestions, which may be confirmed or disproved with the publication of new records. At present the material consists of scattered shreds of information difficult to find and to combine. This essay was undertaken mainly in order to show that coroners existed before 1194, and that the study of their early functions is worthy of more attention than it has hitherto received.

CHARLES GROSS.

[1] Stubbs, Const. Hist., §§ 159, 214, 216.
[2] Stubbs, Sel. Chart., 161, 259, 299.

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THE RUSSIAN JUDICIARY.

NO country can claim a place among civilized nations unless the rights of the individual are duly protected by a fair public trial. The best law will prove inefficient to guarantee personal freedom if the enforcement of the law cannot be secured by an equitable system of criminal procedure. Such security is especially needed in a country like Russia, where the boundaries of the unlawful are so wide as to include "dwelling and travelling without the required passports,"[1] "teaching children in a family without being granted a certificate of proper attainments, pursuant to law,"[2] "apostasy from the established church and its religious dogmas,"[3] and many similar offences. There is a Russian proverb of very deep meaning: "Do not disown the jail, nor the wallet!" In truth, the man who is prosecuted as a criminal in Russia is not always an offender against *jus naturale* or *jus gentium*. The best and most peaceable citizen can never be sure that he may not be unexpectedly arrested on account of some sin of commission or of omission against the omnipresent Russian law. This is the reason why the criminal courts are always a timely topic in Russia, and their defects a subject of passionate controversy in both the conservative and the liberal press.

[1] Criminal Code, secs. 958–974.

[2] *Ibid.* sec. 1051.

[3] I subjoin a few specimens of the laws on this subject:

"Whosoever shall have converted an orthodox [Christian] to another [form of] Christian faith, shall be sentenced either to exile for life in Siberia, if he belong to one of the privileged classes, or to imprisonment in a house of correction for the term of from one year to one year and a half, in case he does not belong to such classes; in either case with the loss of all his personal rights and privileges" (secs. 187 and 31).

"Whosoever, being aware that his wife or children, or other persons put by the law under his care and guardianship, are intending to relinquish the orthodox faith, shall not endeavor to dissuade them from that design, and shall not have employed any of the measures authorized by law to prevent the realization of the said design,

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I.

Injustice is an old ground of complaint in Russia. There are hundreds of popular proverbs that give us insight into the character of the old Russian courts. For example:

The law is like a wagon-pole: it can be turned wherever wanted.
Before the court all are equal: without ransom, all are wrong.
The judge in the court is like the fish in the pond.
The horse sued the wolf: a tail and a mane were left over.[1]

From von Vizin, the court dramatist of Catherine II, to Gogol, who wrote his mordant satires in the reign of the Emperor Nicholas, the literature of a century is full of bitter invective against the corruption of the courts and the ignorance and lawlessness of the judges. Indeed, what could be expected of courts that knew no publicity of procedure, not even for the parties; no oral proceedings; no separation of the rôles of judge and prosecutor; no counsel for the defendant; no cross-examination of witnesses; and of course no jury? The trial was carried on in private, upon written evidence previously collected by the police and examined by the judges in accordance with the "theory of formal evidences." "The testimony of a noble shall be preferred to that of a commoner," — so runs the old law, — "that of a learned man to that of an unlearned; that of a man to that of a woman," *etc.*[2]

Not until the reign of Alexander II was any attempt made to reform these evidently rotten institutions. A commission was then appointed to consider the possibility of amending the existing judicial organization. This commission, despite the conservatism of its president, Count Bludoff, came very soon to the conclusion that no improvement whatever was possible save by a complete abrogation of the old statutes, and the sub-

shall be sentenced to incarceration for the term of from three days to three months, and besides, if he be himself orthodox, he shall be subjected to ecclesiastical penalties" (sec. 192).

[1] Proverbs of the Russian People, collected by Vladimir Dal (St. Petersburg, 1879), vol. i, pp. 189, 190.

[2] Statutes of the Russian Empire (revision of 1857), vol. xv, part i.

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stitution of new codes adapted to the requirements of the time. Accordingly new codes were called into being, which were substantially a copy of the French legislation. Publicity of trial; oral and controversial procedure, with differentiation of the functions of judge, prosecutor and defendant; equal rights for both contending parties; fixed tenure and independence of the judges; trial by jury for the gravest offences, — such were the fundamental principles of the new organization. These principles, however, as will be shown later, were not adopted without important restrictions and many concessions in favor of the old inquisitorial procedure. Yet, such as they were, the new codes were hailed by the people as the harbingers of political freedom. The liberals of that day hoped that the progressive principles laid down in the new legislation would gradually be developed in detail; that the restrictions imposed by a conservative and timorous bureaucracy would be discarded; that the practice of the reformed courts would give to the new codes the importance of the English Habeas Corpus Act.

A quarter of a century has elapsed since the enactment of the new codes, and all reliable authorities to-day agree that the new courts have failed to justify the confidence placed in them by the community.[1] The bureaucratic faction, which regarded the reforms inspired by the leaders of the liberal governmental party as democratic in their tendency, began very soon to undermine the foundations of the new system. The irresolute Alexander II, ever wavering between the two parties, was more inclined, after the attempt upon his life in 1866, to listen to the advice of his conservative counsellors. The attitude of the conservative faction towards the reformed courts was shown as early as in 1869,

[1] Mr. Zakreffsky, now attorney at the Kharkoff court of appeals, declared in 1880 that he regarded the bright hopes evoked by the judicial reform as dreams which it was pleasing to remember, but which it would be unpardonable to mistake for reality. *Cf.* A. Karabegoff, The Reform of the Codes of Procedure, in connection with the Present Condition of Justice (St. Petersburg, 1889), p. 14. The *Magazine for Civil and Criminal Law*, published by the St. Petersburg Juridical Society, said editorially, in November, 1889, p. 36: "We decline to summarize the real condition of the courts and the judges for the past quarter of a century. Considering the facts published by the press, our picture would appear rather gloomy and far from answering the requirements of the jubilee (1864–1889)."

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when a ukase of the Czar relieved the highest dignitaries of the state, such as members of the Council of State, ministers, secretaries of state, senators, governors-general and governors, bishops, chiefs of police, *etc.*, from the duty of appearing before the courts as witnesses, and decreed that the judges and the parties, upon the request of any such witnesses, should appear for the interrogation in the witness's residence.[1] Of course, this privilege was of very little practical importance, since ministers and bishops are seldom summoned to the courts in any country; but the new law was for that reason all the more significant: it clearly indicated the temper of the bureaucracy and foreshadowed the general policy which was thenceforth to be pursued towards the new courts. The independence granted to the judges became more and more illusory. According to the law, vacancies in the courts of common pleas[2] are filled by judges elected by the courts themselves, the election being subject to the confirmation of the Czar. But another clause permits the minister to recommend other candidates of his own. As the minister is nearer the Czar than are the courts, this exceptional method of filling vacancies soon became a common practice. Another provision of the law, also designed to protect the independence of the courts, declares that no advancement or decoration shall be bestowed upon a judge save by the personal grace of the Czar. But as the Czar himself is obviously unable to know all the righteous judges who are worthy of reward, the usual form of recommendation by the minister speedily supplanted the praiseworthy but impracticable project of the legislator, and the prospect of promotion soon began to induce the judges to court the favor of the minister.[3] The latter in his turn can be informed of the comparative merits

[1] Ukase of May 29, 1869, no. 47,149. *Cf.* Code of Criminal Procedure, sec. 65, note; sec. 433, note; sec. 581, note 1.

[2] The Russian judiciary is divided into two departments — "the courts of the peace," held by the justices of the peace (by the ukase of 1889 police courts are to be substituted); and "the courts of common pleas," *i.e.* the circuit courts, the courts of appeals and the Senate.

[3] *Cf.* The Condition of the Courts and the Judges for the Past twenty-five Years, in the *Magazine for Civil and Criminal Law*, *l.c.*, pp. 7, 8, 33–35.

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of the judges only through his subordinate agents, *i.e.* through the district attorneys, attorneys of the courts of appeals and attorneys-general of the Senate. Thus a system of espionage over the courts and official denunciation on the part of the public prosecutors was called into being. Acute conflicts between the courts and the prosecuting officials, which were very frequent at first, soon became rare; and the occult dependence of the judges upon the prosecutors finally established complete harmony.[1] Finally, in 1886, a ukase of the Czar, repealing the fixed tenure of the judges, swept away the last semblance of judicial independence, and made the courts obedient tools in the hands of the government.

There was one body in the state that possessed the power to prevent the decay of the reformed courts. This body was the Senate. The Departments of Cassation of the Senate, created by the codes of November 20, 1864, were invested with supreme authority to interpret the law. The rules of the Russian law are in a state of extreme confusion. Many of them rest upon ukases issued in the sixteenth and seventeenth centuries, in an epoch when the Muscovite state was still fenced from Western Europe with a Chinese wall. In the various ukases issued at various times, often for temporary purposes, it is impossible to discover any general principles. Many of the laws are designated as "provisional rules": *e.g.* there are "provisional rules replacing certain measures of correction by other punishments"; "provisional rules with regard to passports issued to the several classes of the population"; "provisional regulations concerning the press"; "provisional regulations for the administration of the public domains"; and even "provisional regulations concerning testaments." Contemplating this mass of "provisional regulations" that touch the most important departments of social life, one would fancy that these laws had been issued by a provisional government ruling a country temporarily occupied by its armies. In face of this legal chaos, the new Departments of the Senate really became a legislative body, independent

[1] Selivanoff, The Public Prosecution for the Past twenty-five Years, *ibid.* pp. 14–16.

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even of the Czar himself. Clothed with the authority to decide upon the application of the statutes "in conformity with the general spirit of the laws," the Senate was placed in a position to develop the principles of civil liberty and equality before the law, and to establish a real control of the community over the officials. But far from conquering new provinces for the modern principles of jurisprudence contained in the new codes of procedure, the Senate has lent positive aid to the re-establishment of the old bureaucratic and inquisitorial system. The arbitrary and inconsistent character of its decisions has deprived them of any authority, in the eyes of either the scholar or the practical lawyer.[1] On the other hand, prejudice and partiality have played and continue to play a very prominent part in its judgments. It is a pretty well established fact that there are no "grounds for cassation" in favor of a Jew. The following case will sufficiently illustrate this statement.

A discharged Jewish soldier was accused of keeping a coal yard in the city of Kharkoff, where Jews of this class are allowed to reside, but not, according to the opinion of the court, to engage in commerce. The police authorities, however, had taken a different view of the law, and had granted the Jew a license. The court not only annulled the license but sentenced the Jew to expulsion from the city and to confiscation of all the goods stored in his warehouse, besides the payment of the costs of trial. The question was raised whether the confiscation was not comprehended in the Gracious Manifesto of May 15, 1883, remitting all penalties which had been incurred before the said date and which did not exceed imprisonment or fine; and on this question the case was carried up to the Senate. This tribunal found that the Gracious Manifesto was not applicable, on the ground that the confiscation of the complainant's prop-

[1] In 1882 the St. Petersburg Juridical Society passed a resolution declaring that the Senate had proved unable to provide for the uniform interpretation of the law. And even Mr. Shtcheglovitoff, who edits the publications of the Department of the Ministry of Justice, was forced to confess that the practice of the Senate, "it is to be regretted, has not infrequently fallen into casuistical and contradictory interpretations." See Preface to the Code of Criminal Procedure, published by the authorization of the Minister of Justice, by S. G. Shtcheglovitoff (St. Petersburg, 1884).

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erty was not a penalty, but merely a recovery of damages suffered by the Treasury in consequence of the unlawful trade of the Jew.[1] The Senate did not explain what kind of damages had been suffered by the Treasury. As the Jew could not have procured the license without paying all the taxes required by the law, and as, besides, he had to pay the costs of the trial, it is somewhat difficult to imagine what these damages really were. Moreover, the Senate itself had declared, in an earlier decision, that the reimbursement of unpaid taxes would cover all the damages of the Treasury, and that confiscation of goods was to be regarded as a supplementary penalty.[2] But at the time when this earlier decision was rendered (1878) there was no extraordinary persecution of the Jews, whereas in 1887, when the Senate changed its ruling, legal restrictions were being showered upon the Jews on every conceivable pretext. The new ruling was clearly in line with the general policy of the government.

The last check upon the lawlessness of the supreme court of the empire was removed by the repeal of the law providing for the publication of the decisions of the Senate. According to the code of 1864, all the decisions of the Departments of Cassation were "to be made known to the public to serve as leading cases for the uniform interpretation and application of the laws." By the novel of June 10, 1877, it was left to the Senate itself to determine whether any particular case involved such an interpretation of the general law as to constitute a leading case, and it was provided that henceforth only the cases which the Senate should so designate should be published. In all other cases the Senate was empowered to render its decision in the form of a resolution, without any statement of the grounds of the decision (sections 933 and 925). By this law the decisions of the Senate are emancipated from the control of public opinion.

Reviewing the work of the Senate for the past twenty-five years, one would imagine that this tribunal was seriously en-

[1] Decision of the Criminal Cassation Department of the Senate in the matter of Zhivotinsky, 1887.

[2] Decision in the matter of Kalmann, January 3, 1878.

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gaged in proving that there was no reason for its own existence, since the decisions of the lower courts are almost invariably affirmed. The dogma of judicial infallibility is of course an essential element in the bureaucratic system; and the purpose to destroy this dogma which apparently actuated the legislator in 1864 has not been realized.

II.

It has already been stated that the liberal principles of the judicial reform of 1864 were not adopted without serious restrictions and qualifications. Modern jurisprudence and the legal wisdom of the age of Carpzov were to be reconciled by a sort of compromise: each was to rule a province in the domain of justice. The law governing the trial was radically reconstructed, in accordance, to some extent, with the principles of Anglo-Saxon law; but the rules regarding the inquest and the indictment were based upon the principles of the old inquisitorial procedure. When the section entitled "Preliminary Inquest" was discussed in the Reform of Procedure Committee, it was unanimously voted to admit counsel for the defence and to make the hearing public. Both propositions were finally rejected by the Council of State. Under the old inquisitorial system it had become a fixed idea that publicity would imperil the success of the inquest; that the friends and even the accomplices of the criminal would be placed in a position to hinder the judge from getting at the truth.[1] The logical outcome of this idea was the law enacted January 30, 1870, prohibiting the publication of any reports of the preliminary proceedings. Thus was abolished even that slight control over the inquest which the Russian press was able to exercise under the vigilant eye of the censor.

The apprehension also prevailed that counsel for the defence "would believe it to be their duty to thwart the search for evidence inculpating the accused and to aid the latter in conceal-

[1] Record of the meetings held September 23 and 25, 1864, pp. 18–20. *Cf.* Codes of Procedure published by the State Chancery, vol. ii, pp. 128, 129.

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ing the traces of his crime."[1] As a substitute for counsel, excluded by law from the inquest, "the judicial inquisitor[2] is bound to investigate with complete impartiality the evidence exculpating the accused as well as that inculpating him" (section 265). It is evident that this combination of judge, counsel for the state and counsel for the defence in the single person of the inquisitor is ill adapted to protect the accused against injustice; and the interests of the latter are further imperilled by the fact that the inquisitor, as counsel for the state, is assisted by a public prosecutor, while as counsel for the defence he has to rely on himself alone.[3] In one respect, moreover, the inquisitor is liable to be overruled by the public prosecutor, *viz.* in the admission of supplementary evidence for the state. Whether the inquisitor will admit supplementary evidence indicated by the accused rests wholly in his discretion: he is directed to admit only such evidence as "may influence the decision" — *i.e.* may in the opinion of the inquisitor have this effect, — "after which the latter declares the inquest closed" (sections 477 and 478). But "the procurator or his assistant has the power to demand that the inquest be completed according to his directions, although the inquisitor have declared the inquest closed" (section 286).

All the faults inherent in the law have been greatly aggravated in its application. According to the code of 1864, the inquisitor was a judge, removable only for crime and by sentence of a court, and consequently independent in the performance of his duties. Even before the tenure of the judges was changed by the novel of 1886, the guaranties of the independence of the inquisitors were openly evaded by the minister, and in a very simple way. Almost from the outset the appointment of regular inquisitors, such as were contemplated in the new code, was systematically avoided, and the conduct of inquests was

[1] Proceedings of the Council of State for the year 1864, no. 47, p. 32.

[2] "Judicial inquisitor" is the legal title of the officer in charge of the inquest. The French *juge d'instruction* served in some measure as a prototype for the Russian office. The modification of the title is significant.

[3] *Cf.* Code of Criminal Procedure, secs. 278–287.

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entrusted to officials of the ministry "temporarily performing the duties of inquisitor." Fully at the mercy of their superiors and regarding their situation as a stepping-stone to the office of procurator, these "*tchinovniks* of the ministry" are the obedient servants of the public prosecutors.[1]

It is only natural that public prosecutors should strive to obtain as many convictions as possible, and it seems hardly necessary to stimulate their official zeal by arousing the instinct of self-preservation. This, however, was done by a circular issued by the minister of justice, requiring the prosecutors, whenever the number of acquittals in any single session should exceed twenty per cent of the cases tried, to report to the minister upon each case and state the reason for the verdict. As to the effect of these instructions, Mr. Selivanoff says:

> Many of the prosecuting attorneys interpreted this circular to mean that the ministry did not desire the number of acquittals to exceed twenty per cent, and accordingly strained every nerve to prevent any such excess. With this end in view it sometimes happened, when a large number of acquittals had occurred in a single session, that the prosecutors procured an adjournment of those cases in which it seemed doubtful whether a conviction could be secured.[2]

This compulsory bias found an open field, of course, in the inquest proceedings, which were virtually under the control of the public prosecutors. Although the above circular was withdrawn in 1881, yet the same tendency is manifested in subsequent legislation. The outcome of this state of things is the *officially conceded* partiality of the inquisitors — a strong leaning on their part in favor of the prosecution — which result is ascribed to the "inquisitorial" character of the preliminary proceedings.[3] In truth no means are deemed improper to secure evidence against the accused. The law, indeed, forbids

[1] *Cf.* S. G. Shtcheglovitoff, The Inquest during the Past twenty-five Years, in the *Magazine for Civil and Criminal Law*, November, 1889, p. 10; also N. Selivanoff, The Public Prosecution during the Past twenty-five Years, in the same issue, p. 20.

[2] *Ibid.* p. 13.

[3] This was explicitly stated in the report of the committee appointed in 1882 to consider the question of reorganizing the inquest. The committee was composed of

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its agents "to extort confession from the accused either by promises or subterfuges or threats or any such measures" (section 405); but this law is not infrequently infringed. In a case related by Mr. Karabegoff,[1] a witness stated before the court that he had been directed by the captain of the police to "trick" out of the suspected person a confession of his alleged crime, in which scheme the witness succeeded by promising the man freedom from punishment and 600 rubles into the bargain. Examples of such illegal practices could be cited by every Russian barrister *ad infinitum*. But of course infractions of the law, however frequent, are presumed to be exceptional; and it may be freely conceded that in most cases the inquisitor has no need to resort to such illegal devices as I have instanced. The law (sections 420 and 421) gives him discretionary power to refuse bail; the Russian suits are very slow, and one or two years of preliminary detention pending trial may be said to be the rule;[2] so that the inquisitor can put a pretty energetic pressure upon the accused by threatening imprisonment or promising release on bail. On the other

one senator and nine assistant attorneys-general of the Senate, among them Professor Foinitzky of the Imperial University of St. Petersburg, the prominent Russian criminalist. *Cf.* S. G. Shtcheglovitoff, The Inquest, *etc.*, in the *Magazine for Civil and Criminal Law*, *l.c.*, p. 21.

[1] A. Karabegoff, The Reform of the Codes of Procedure in connection with the Present Condition of Justice (St. Petersburg, 1889), pp. 27–55. This book, which gives the author's experience during twenty years as a barrister in the Caucasus, has attracted much attention in Russia and has aroused the indignation of the local judges. Immediately upon its publication the Tiflis court of appeals resolved (1) to request the Senate to institute a prosecution against the author for insulting through the press the highest tribunal in the empire; (2) to prosecute him for insulting through the same medium the judges of the Tiflis court of appeals; and finally (3) to summon him before the circuit court, in disciplinary procedure, for violating his duties as an officer of the court.

[2] I could cite from my own brief practice at the bar a round dozen of cases which lasted still longer. For example, the case of Glückmann *et consortes* began in the fall of 1883 and ended in the spring of 1888; one of the defendants, Peter Minkiewicz, had spent all this time in prison, others were kept from one to three years in preliminary detention. The case of Osheroffsky, father and son, began in 1879 and ended in 1888. All these men were charged with frauds to avoid military service. The prosecution of the Gerlowicz brothers began in 1873; the case was tried by the Minsk circuit court in 1890, *i.e.* after sixteen years! The accused, in this case, were set free on bail, but their estates were all the time under a legal lien of 60,000 rubles.

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hand, the distinction between witness and accused is so shadowy in Russia[1] as to make it quite an every-day occurrence that individuals who have first been arrested as suspects, and even kept in jail by the inquisitor, subsequently appear on the stand as witnesses for the prosecution. Under these circumstances it is not unnatural that the inquisitor treats the witnesses very much like accused persons.

Such being the authority with which the inquisitor is entrusted, what are the remedies against the abuse of his power?

Ever since the new system went into operation he has been left free to construe the law as he pleased. By a series of decisions, the earliest of which dates as far back as 1870, the Senate has simply vacated its jurisdiction over all matters connected with the inquest, except in those cases "where the errors of the inquest could not be corrected in the course of the trial; provided always that these errors might have exerted and did actually exert a positive influence upon the verdict of the jury."[2] This practice has lately gained the support of one of the best authorities, Attorney-General Koni. In the sensational case of Nazaroff, notary public of Moscow, Mr. Koni argued that the inquest is nothing but a preamble to the actual trial of the case, in which all the evidence collected is to be re-examined.[3] Such indeed was the aim of the legislator; but this aim has been defeated in practice, and the preliminary proceedings in the inquest actually exercise a controlling influence upon the trial. But even if this point be waived, the rule adopted by the Senate is open to criticism on other grounds. Let us test Mr. Koni's opinion by examining the operation of the rule in an actual case. An ancient institution of the Russian law was adopted in the new code, *viz.* the interrogation of the "men of the vicinage."

[1] "To be implicated as a witness" in a lawsuit is generally considered as a grave disaster. Scores of popular anecdotes ridicule the dread of the stand instinctive among the natives of the empire. There is a proverb which runs: "My home is on the outskirts, I know nothing."

[2] Decisions of the Senate, no. 335, in the matter of Divoff; 1881, no. 12, in the matter of Konoplin; 1868, no. 34, in the matter of Lalande; 1876, no. 97, in the matter of Ovsyannikoff. *Cf.* also Shtcheglovitoff, *l.c.*, p. 30.

[3] *Cf.* Koni, Speeches delivered in Court, p. 624.

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It is an embryonic form of jury, composed of twelve or at least six men, who are called to bear testimony "upon the business, connections and behavior of the accused" (section 454). The legislator attributed great value to this institution:

> The duty to appear personally before the court is so very onerous in Russia, taking into account distances and the absence of rapid transit, that the number of witnesses summoned to the court is necessarily limited to those who can give direct evidence regarding the offence under consideration . . . while such a jury, called in from the vicinity, is able to show positively the state of public opinion towards the accused, and to give valuable information touching his character and behavior.[1]

Now suppose that the inquisitor, who is positively bound to cite the "men of the vicinage" if the accused demands it, has nevertheless refused to comply with such a demand. This is certainly an omission that cannot be corrected in the course of the trial. But how can the accused prove to the Senate, first, that the testimony of the "men of the vicinage," had it been taken, would have made a favorable impression on the jury, and, second, that it is precisely the absence of this testimony, the character of which is unknown, that has exerted a positive influence upon their minds and produced a verdict of guilty? In the case that actually came before the Senate, the complainants were of course unable to show the required "positive influence"; and the Senate, true to its principle, decided that the verdict was not invalidated by such errors in the inquest.[2] "In consequence of all these restrictions," says Mr. Shtcheglovitoff, the well-known authority on procedure, "the grounds for the invalidation of the verdict are quite arbitrarily narrowed and the inquest is deprived of any uniform control by way of cassation."[3]

The supervision of the circuit court and the court of appeals (the only remaining bodies to which recourse can be

[1] Records of the Session of the State Council held September 23 and 25, 1864, pp. 30–33. *Cf.* Codes of Procedure published by the State Chancery, vol. ii, pp. 167–172.

[2] Decision of the Senate, 1870, no. 826, in the matter of Lashkoff, Loginoff and Ertzoff.

[3] *L.c.*, p. 31.

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had against the unlawful proceedings of the inquisitor) practically amounts to nothing. The complaints are heard in so-called administrative meetings of the court (section 501), *i.e.* behind closed doors. The prosecutor's presence is required (section 505), but the complainant is not allowed to be represented by counsel.[1] The complainant may plead personally "in case he is present in the court in due time" (section 504); but he is not summoned to the court, and consequently, if he is held in "preliminary detention," he cannot be present. In the absence of publicity and of any effective control on the part of the complainant these pretended "meetings" of the court have in fact become a myth: the resolution dismissing the complaint is invariably prepared beforehand by the recording judge and signed by his colleagues without any deliberation whatever.[2]

It goes without saying that whenever the courts are held in private the press is prohibited from reporting their proceedings, and it is only from individual experience that anything can be learned about their doings. The following example, taken from my own practice at the bar, sheds some light on the way in which the courts guard the rights of the complainants. In connection with the prosecution of Baruch Botwinnik, who was tried in April, 1890, before the Minsk circuit court for theft and murder, a certain Każdan was arrested by Inquisitor Tchekan, denied bail and kept nine months in jail, as an accomplice. The man protested his innocence and demanded to be released on bail; but his complaints were unavailing. He was finally dismissed because there was no ground either for indicting him or for holding him as a witness. He had, in fact, nothing to do with the case. Had the court which was bound to pass upon his complaints paid the slightest attention to them, he would not have languished nine months in jail without cause.

[1] Decision of the Senate, October 2, 1887, no. 21.

[2] *Cf.* Karabegoff, *op. cit.*, p. 37 *et passim*; also *Juridichesky Viestnik* (Juridical Messenger), the official journal of the Moscow Juridical Society, 1883, vol. ii, pp. 302, 303.

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It must be borne in mind that there is, in reality, no action for damages against either the inquisitor or the judges of the court. The law reads:

> The acquitted defendant is not deprived of the right to bring suit for damages against the officers of justice, the judicial inquisitor and the procurator included, provided he can prove that they have acted with a bias of oppression, without lawful ground or reason, or generally in bad faith [section 783].

This proviso of course renders the right of action illusory; and the non-existence of any "leading case" upon this section of the law proves that such an action has never been instituted. But even if this action were available, its remedial power would only be exercised after the injury had taken place. What is needed is a means of preventing the evil consequences of a defective inquest. For this purpose the legislator provided that an indictment should be drawn up only in case "the inquest is acknowledged to be sufficiently complete and to have been conducted without violation of essential forms and observances of procedure"; otherwise the case was to be sent back to the inquisitor for further examination. Here again the practice of the court has nullified the intent of the law. There is no controversial procedure in connection with the indictment: it is found by the court of appeals, behind closed doors, in the absence of the defendant, but in the presence of the prosecutor.[1] A recent editorial in the *Juridical Annals* makes the following statements:

> The instances in which the court of appeals really troubles itself to examine the facts of a case before finding the indictment are very rare; such an examination takes place only under exceptional circumstances. It is an open secret for all practising lawyers that in the enormous majority of cases the bill of indictment is simply indorsed, without any consideration whatever of the proceedings in the inquest.[2]

[1] Code of Criminal Procedure, book ii, division iii, chap. ii.

[2] *Cf. Juridicheskaya Letopis* (Juridical Annals), published in St. Petersburg by V. D. Sergeyevsky, Professor of Criminal Law at the Imperial University of St. Petersburg, December, 1891, p. 545. Mr. Selivanoff, an optimistic admirer of the public prosecutors, pleading against "suspicion of partiality," dwells on some defects of the

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Some of the cases brought before the Senate illustrate in an interesting manner the practice on indictment. In 1869 the Senate quashed the indictment of a certain Yegoroff, who had been examined as a witness in the inquest, but had never been summoned as defendant.[1] That is, Yegoroff was indicted without receiving any opportunity to examine the witnesses in the course of the inquest, or to produce his own witnesses, and without even being heard on the evidence for the prosecution; and it was not until he was found guilty by the jury (there being no legal way for him to enter complaint against the indictment sooner) that his liberty was restored to him by the Senate. Another indictment was quashed because it was "not based upon evidence collected, but upon a mere supposition of the possibility of a convicting verdict."[2] As the Senate considers these cases altogether from the formal point of view, it was only the guileless candor with which the court of appeals indicated the grounds of its action that made it possible to overthrow the indictment. Experiences of this sort have made the courts more careful as regards the form of their indictments; and a brief consultation of the leading cases, which are conveniently arranged in alphabetical order and also collected in footnotes to the code, enables them to base their indictments upon such grounds as the Senate approves.

Contemplating the unbounded power of the inquisitor over the ordinary subjects of the realm, and his absolute subordination to his hierarchic superiors — both characteristic features of a bureaucratic government — and taking into account the complete absence of publicity in these preliminary proceedings, it seems fair to say that the reform of 1864 reduces itself to a partial change of the officers in charge of the inquest, without

judicial system: "The desire of promotion sometimes lures certain gifted but rather youthful prosecutors to press charges not fully supported by evidence; but in such cases the fault should be largely imputed to the courts of appeals that have indorsed these *light* bills of indictment." The Public Prosecution, *etc.*, in the *Magazine for Civil and Criminal Law*, Nov., 1889, p. 19. *Cf.* also a paper on Our Jury in the same periodical for 1880, no. 3, p. 11.

[1] Decision of the Senate, 1876, no. 8.

[2] Decision, 1866, no. 78, in the matter of Leontieff and Daniloff.

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any essential change in the procedure itself. This is still purely inquisitorial.

III.

Leaving the inquest, let us now enter the reformed temple of justice, where "the prosecutor and the defendant enjoy equal rights in the judicial contest" (section 630). All the testimony that has been collected in private is now to be re-examined and tested in the light of public, oral and controversial procedure. At this point the contradictory principles underlying the two successive phases of the action come into collision, and the first question that presents itself is this: Shall the defendant be allowed to destroy the network of the inquest by means of new evidence? In the proceedings of the Reform Committee the old conception of the procurator as "the guardian of the law," "the Czar's eye," was clearly dominant. The committee declared:

> It is impossible to grant to the public prosecutor and to the defendant equal rights to summon witnesses to the trial, because of the unlikeness of their respective positions in the case. The procurator is the prosecutor of crime in the name of the law, which is even more opposed to the condemnation of the innocent than to the acquittal of the guilty. Condemnation is not the end towards which the whole activity of the procurator should be directed, but revelation of the truth, whatever it may prove to be, whether the guilt of the accused or his innocence. The less complete the arguments of the prosecutor, the greater the uncertainty at the close of the contest, — a condition which will tend to condemnation. Consequently the procurator is obliged to produce all the evidence which may be discovered against the accused.[1]

Accordingly the public prosecutor was granted absolute power to summon new witnesses at any time until the day of the trial, without being bound to produce any reasons therefor (section 573), while the right of the defendant was subjected to many restrictions. If he desires to summon witnesses

[1] Report of the Reform of Procedure Committee of 1863, pp. 286, 287; *cf.* Codes of Procedure published by the State Chancery, vol. ii, pp. 218, 219.

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who have not been examined in the course of the inquest, he must petition the court to this effect. The court may refuse the request, if it is not satisfied that the reasons adduced are plausible (section 575). However, the court is absolutely bound to recall its refusal in case the defendant asks to have the witnesses summoned at his own expense (section 576). The protection afforded to the defendant by this latter rule, however unsatisfactory, was assuredly better than nothing. It was reduced to nothing, in 1878, by an arbitrary decision of the Senate,[1] and the admission or exclusion of new testimony has since rested wholly in the discretion of the courts. At the same time, an increasing tendency has developed itself in the courts to regard the inquisitor's chamber as a sort of purgatory for witnesses, and to view with suspicion all those who have not passed through its cleansing flames. If the witness was not indicated by the defendant in the course of the inquest and was not examined by the inquisitor, his testimony is either immaterial or untrustworthy, — such is the customary argument of the public prosecutor and of the presiding judge in his charge to the jury.

The code, again, permits the evidence taken in the inquest to be read in certain cases before the jury. This rule has been greatly broadened in the practice of the courts; and the judges are but too willing to adopt the presumption in favor of the "first" testimony. This, it is claimed, is the more trustworthy because the witness stands before the inquisitor unprepared, whereas between the inquest and the trial there is plenty of time to instruct him in favor of the defendant. But there is another side to the question; and when we examine the method in which this "first" testimony is collected, the presumption in its favor is seriously shaken. The part played by the police in the inquest is much more important in practice than is indicated

[1] This decision was dictated by purely political considerations. The unexpected acquittal of Vera Zassulitch, who had attempted to shoot General Trepoff, chief of the St. Petersburg police, was regarded as a vote of condemnation against the government. The Senate felt it necessary to discover some error in the trial, at whatever sacrifice of legal logic and of the rights of the defence.

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in the text of the laws. The "search" (*doznaniye*) made by the police in cases of urgency and when the inquisitor is absent, should be, by the code, an exceptional occurrence; but in the rural districts, because of the vast distances and the small number of inquisitors, the absence of the inquisitor and the employment of this police procedure has become the rule. The inquest accordingly often takes place a week or two after the "search" has been made, and there is time enough for the parties to prepare the witnesses for the interrogation to be held by the inquisitor. Under these circumstances the supposed advantage which the inquisitor enjoys in the pursuit of truth is quite illusory; the trail is no longer fresh when he strikes it. As a matter of fact, the frequent discrepancy between the evidence given in court and that recorded in the protocols of the inquest is ordinarily due to the methods pursued in the inquest. Most of the witnesses are completely illiterate: they can neither read nor sign their depositions, and they do not understand the learned language of the protocol when read to them by the inquisitor. According to the law (section 470) such depositions must be signed by a person trusted by the witness; practically, the only person in whom the witnesses appear to have confidence is the inquisitor's clerk; and his signature is regarded by the Senate as a sufficient compliance with the requirements of the law.[1]

It was fully recognized in 1860 that the police were not to be trusted with judicial functions. The office of judicial inquisitor was created for the express purpose of excluding them from any participation in the inquest. The reform of 1864 gave fuller development to the same principle. But the inquisitorial spirit has proved too strong for the law and has shaped the practice in accordance with its theories and traditions. In their pursuit of the "first" testimony (not always obtainable, as we have seen, through the inquisitor), the public prosecutors have found it necessary to invoke the aid of the police. The exception which permits the police to conduct the first examination has

[1] Resolution of the Joint Assembly of the Departments of Cassation, 1881, no. 59.

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become the rule since 1878, when the *uryadniks* were created — a class of rural policemen specially entrusted with the search for "the roots and threads" of crime. In utilizing their labors a further innovation has been found expedient. It often happens, awkwardly enough, that witnesses deny, before the inquisitor, the depositions which they are alleged to have made to the *uryadniks*. It is obviously useless, from the public prosecutor's point of view, to summon such witnesses to the court. Nor can their first statements be laid before the jury, inasmuch as the reading of police protocols in open court is absolutely and unequivocally forbidden by the law. Accordingly the prosecutors have resorted to the ingenious device of summoning the police officers as witnesses, and causing them to state, *viva voce*, the contents of those very protocols which cannot be read to the jury. In the same way the depositions made in the course of the "search," which it is likewise unlawful to read in the trial, are brought to the attention of the jury. The agents of the police are even allowed to testify concerning confessions made to them by accused persons, the reading of such confessions as are recorded in the inquisitor's protocol being positively forbidden by law.[1] The evidence given by these officials, as any one familiar with Russian criminal proceedings can testify, sounds like a recitation of a lesson learned by heart; and when their memory is at fault, they are permitted to refresh it by casting a glance at the protocol. All that is required is that they shall not read from the protocol, but state its substance in their own words.[2]

The reform legislation of 1860–64 aimed to exclude the police from judicial activity, even in the inquest. But the open places in the law have been so ingeniously widened in practice that the police control the inquest and exercise a preponderating influ-

[1] The law goes so far as to prohibit the public prosecutor and the presiding judge from alluding to such confessions when the defendant pleads "not guilty." Code of Criminal Procedure, secs. 627, 680, 683, 684. But see Decisions of the Senate, 1871, no. 535, in the matter of Goosev; 1874, no. 326, in the matter of Kalinina; 1874, no. 400, in the matter of Khalistoff and Fotkullin.

[2] *Ibid.* *Cf.* also the decisions of 1870, no. 953, in the matter of Zharinoffs and no. 1484, in the matter of Kopytoff; and 1874, no. 289, in the matter of Popoff.

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ence in the trial. The codes, again, aimed to separate completely inquest and trial, and to make of the trial an independent procedure in which the results obtained in the inquest should be thoroughly sifted and tested. But the introduction of the folios of the inquest and the superstitious veneration for the "first" testimony have caused the inquest to dominate the trial. Finally, the inability of the defendant to introduce new evidence except with the consent of the court, coupled with the disinclination of the courts to give such consent, has made it an almost hopeless task for the accused to break through the meshes which the police "search" and the regular inquest have thrown around him.

IV.

These things were not done without persistent opposition on the part of the newly created faculty of advocates; but as the final decision lay with the courts themselves, the opposition of the bar was hopeless from the outset. The complete triumph of the inquisitorial idea was, however, still impeded by one obstinate and incalculable factor — the jury. In the absence of any means of exercising direct pressure upon the jury itself, the next step to be taken was to restrict the facilities of counsel for influencing the minds of the jurors in favor of the prisoner.

> After the witness shall have recited his testimony [so runs the law] the chairman shall permit the parties to question the witness on all matters which either party may deem to be of interest [section 719]. Every witness may be re-examined in the presence of other witnesses [section 726].

This privilege has been practically repealed by the "interpretations" of the Senate, which have converted the presiding judge into an autocratic ruler over the trial. The president has been empowered to arrest the examination of the witness on the ground that the subject has been exhausted or that the question of the party has nothing to do with the case.[1] He has also the right

[1] Decisions of 1875, no. 300, in the matter of Spevakofsky; 1884, no. 14, in the matter of Sviridoff.

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to grant or to refuse the re-examination of the witness in the presence of other witnesses contradicting his testimony.[1] The witness cannot be asked questions tending to discredit his good moral character and the truthfulness of his testimony,[2] or to accuse him of the crime imputed to the defendant.[3] Some of these rules might be in themselves reasonable, and if applied by an independent and responsible judiciary would afford little ground for complaint. But, as matters stand now, they open the way to many abuses. The tendency prevailing in the courts is best shown in their decisions concerning experts. Thus it was held by the Senate that the court had acted fully in compliance with the law in asking the expert to recite what he had deposed in the inquest, while the questions the counsel for the defence intended to ask the expert were to be submitted to the previous consideration of the court.[4] It is left entirely to the discretion of the president to decide whether any question asked in the cross-examination of an ordinary or expert witness is or is not "essential";[5] and the question, *e.g.* whether certain anatomical changes that are considered to prove murder might be produced by disease, was held to be "unessential," both by the court and the Senate.[6] Such restrictions upon the cross-examination make it very difficult, to say the least, for the defence to refute the data of the

[1] Decisions of 1866, no. 13, in the matter of Nevedomsky; 1869, no. 298, in the matter of Andronnikoff; 1869, no. 412, in the matter of Morozoff; 1871, no. 1256, in the matter of Arbatsky; 1872, no. 822, in the matter of Khalitoff; 1875, no. 300, Spevakofsky.

[2] Decision of 1874, no. 372, in the matter of Razsoodin. The law provides only for the case where such questions are asked by "the parties"; and the judge is entitled to ask them, "provided the witness has been told of his right to decline to answer." See Decision of 1876, no. 148, in the matter of Fedoroff. Of course, this proviso has little practical value, the silence of the witness being oftentimes as significant as his answer could be.

[3] Decision of 1872, no. 518, in the matter of Kozloff.

[4] Decision of 1875, no. 175, in the matter of Arefieff and Delimoff.

[5] Decisions of 1872, no. 159, in the matter of Varfolomeeff and Loonin; 1875, no. 300, in the matter of Spevakofsky; 1875, no. 163, in the matter of Galatzky; 1868, no. 954, in the matter of Khoteff; 1876, no. 268, in the matter of Chemokayeff; 1872, no. 305, in the matter of Vdovenko; 1872, no. 473, in the matter of Kosagoff; 1874, no. 374, in the matter of Razsoodin.

[6] Decision of 1874, no. 439, in the matter of Pankoff.

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inquest.[1] It seems as if, in the opinion of the government and of the courts, repression of crimes (or of what the Russian law describes as crimes) would become impracticable were both parties allowed the full exercise of equal rights in the course of the trial.

When we come to the closing argument for the defence, we find counsel further hampered and the interests of the accused further prejudiced by considerations of a political nature. In Russia public meetings of any kind are forbidden by law, except those held by scientific societies and legal bodies and corporations; and the bar is the only platform from which a private person can deliver a public address. It is quite logical, therefore, that the barrister should be regarded by the law with a certain degree of suspicion. Accordingly, while the prosecutor is admonished

> not to present the case in his arraignment in a one-sided way, by referring solely to the evidence which tends to convict the defendant, nor to exaggerate the weight of the evidence at hand, nor the gravity of the offence to be judged [section 739],

the counsel for the defence is warned

> not to enter into discussion of such matters as have no bearing upon the case, nor to permit himself to overstep the respect due to religion, law and constituted authorities, nor to use such language as may be insulting to private individuals [section 745].

The practice of the courts has gone far beyond the apparent intention of the legislator, and the decisions of the Senate have given the president absolute power to fix the limits of the defendant's plea and rejoinder,[2] and to check counsel whenever the arguments of the latter "have nothing to do with the mat-

[1] *Cf.* in addition to the above cases, the decisions of 1871, no. 1266, in the matter of Meshkoff; 1872, no. 132, in the matter of Timofeeff and Kosatch; 1874, no. 84, in the matter of Repievsky; and 1874, no. 735, in the matter of Sobakareff. In this last case the right of producing official documents to substantiate the allegations of the defence — a right positively granted to the parties by the code (section 687) — has been so modified by way of "interpretation," as to make the reception of such documents dependent upon the discretion of the court.

[2] Decision of 1870, no. 470, in the matter of Gasten.

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ter under consideration."[1] What is practically meant by this vague language is shown by decisions on particular points. The opinions of writers on jurisprudence cannot be quoted and interpreted in the plea;[2] nor can the measures taken by either the indicting chamber or the circuit court be criticised by the counsel for the defence[3] — not even when these measures have to a great extent predetermined the course of the trial. Suppose, for example, that the defendant has been refused the privilege of producing certain evidence which, in his belief, would prove his innocence, but which, in the opinion of the court, would have no such effect. Under the decisions of the Senate the defendant has no means of informing the jury that he was hampered in his efforts to clear himself. The president's power in this matter has become dictatorial: the counsel cannot contradict him by pointing out the rights of the defence,[4] nor even utter any remarks in regard to his rulings.[5]

This *capitis diminutio* of the defence was not effected without a bitter fight between the magistrates and the bar. The opposition of single barristers, in a country where the value of the individual is quite an infinitesimal quantity in comparison with the importance of the state, would have amounted to very little, had it not been backed by a corporate organization strong enough to protect the counsel who did "point out the rights of the defence." Such an organization had been created by law in the form of an "inn of court," or *conseil du barreau*. All the attorneys practising within the jurisdiction of a given court of appeals form one corporate body, which has regular meetings and elects its executive officers, who constitute collectively the "council of the bar." The council has the prerogative of admitting to the bar and of disbarring its members, without any interference on the part of the court. No attorney

[1] Decision of 1872, no. 159, in the matter of Loonin and Varfolomeeff.

[2] *Ibid.*

[3] Decisions of 1868, no. 128, in the matter of Kalistratoff; 1870, no. 453, in the matter of Brailofsky.

[4] Decision of 1867, no. 522, in the matter of Sergooshin.

[5] Decision of 1872, no. 947, in the matter of Starikoff.

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can be prosecuted for abuse of his functions save by the council of the bar. This organization gave the conscientious advocate a firm guaranty of his independence; and for precisely this reason it soon fell into disfavor with the government. In 1875 a ukase of Alexander II put a stop to the formation of new councils in those parts of the empire where the new code was yet to be introduced. Thus there are now only three courts of appeals — those of St. Petersburg, Moscow and Kharkoff — within whose jurisdiction the bar is really independent of the court. In all the other appellate districts the circuit courts have been invested with the prerogatives of the council of the bar. Of course, where an attorney can at any time be suspended or disbarred at the discretion of the court, independence of the defence is out of the question; and, equally of course, the attitude of the courts towards the defence is steadily growing more insolent. How great this "contempt of the bar" has become may be judged from actual occurrences. Mr. Przewalsky, vice-president of the Moscow Council of the Bar and of the Moscow Juridical Society and one of the foremost lawyers in Russia, was threatened by the president of a provincial circuit court with expulsion from the court room. In this case the bearing of the barrister had been thoroughly dignified and had given no justification for the threat. What was of more consequence, the barrister was too important and the judge too unimportant to make the insult laudable, even in Russia; and the next day the chairman made his excuses to Mr. Przewalsky. In another case, that of Mr. Sidoroff, a modest attorney of an out-of-the-way town in the province of Novgorod, the outcome was different. Mr. Sidoroff was arrested by order of the president of the court of general sessions, for no other offence than the endeavor to plead his client's cause. It is true that the conduct of this particular judge was afterwards pronounced unlawful by the St. Petersburg court of appeals and that the offending president was sentenced to three weeks' arrest; but the evidence brought out in the court of appeals showed that his action was by no means singular, nor Mr. Sidoroff's experience an isolated instance. Several justices testified that the case-

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was not unique, and that they believed such control of the attorney by the court to be lawful. In an editorial of the *Court Gazette* of St. Petersburg, dealing with this case, it was said:

> The so-called judicial "incidents" have begun to occur with increasing frequency [and to assume] the form of acute conflicts between the bench and [the counsel for] the defence. These conflicts usually take place under conditions openly violating the rules of a noble, chivalrous tournament, the arms of the parties being unequal, and the one enjoying a manifest superiority over the other. Cutting in on the counsel's argument, giving him admonitions in an authoritative tone, threatening to stop his plea or to have him expelled from the court, — these are at present every-day occurrences, cheering to the enemies of the bar, but a source of deep affliction to those who believe that the barrister is a servant and helpmate of justice and that he should by no means be reduced to the ranks and drilled into an obedient soldier in a judicial parade.[1]

The powers attributed to the presiding judge and the attitude which he commonly assumes have completely distorted and deformed the trial. Taken as a whole, it gives the impression of a contest between the court and the defence. With the "last word" of the defendant his last means of resistance is expended, and he stands helpless against the judge's charge.[2] In the person of the president is incarnated the judicial triunity of prosecutor, defendant and judge. He, it is true, like the inquisitor, is recommended to remain impartial (sections 802, 803), but his triple task is beyond the capacity of a mere man. In France, where the Russian legislator found the prototype of this office, complaints against the bias of this official and the abuse of his authority were endless, and the universal protest of public opinion has resulted there in the abolition of the presiding judge's charge. In Russia an opposite development has taken place: the powers of the president have been increased, and all checks upon misuse of the charge have disappeared. Mr. Shtcheglovitoff has compiled, in his edition of

[1] *Sudebnaya Gazeta* (Court Gazette), no. 11, March 17, 1891.

[2] The argument is closed in Russian courts by "the last word" of the defendant himself, immediately followed by the judge's charge.

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the code, more than a hundred leading cases in which appeal was made against the partiality of the president;[1] and these cases show it to be the practice of the Senate to dismiss all such complaints. One-sidedness of the charge is held not to avoid the verdict.[2] Improper expressions, positively affirming the guilt of the accused,[3] and even falsification of the data of the trial[4] in the president's charge are not sufficient ground for quashing the sentence. Nor does it matter that statements were made by the president which had not been verified in the course of the trial, provided they were contained in the bill of indictment.[5] This means that the over-zealous president is allowed to maintain charges which the prosecutor has dropped, perhaps because the latter did not dare to submit his evidence to the test of cross-examination.

The presiding judge has thus practically become counsel for the prosecution. In fact he has become almost the entire prosecution. His advantages of position make his work in this direction so much more effective than that of the regular prosecutor that the modest features of the latter almost disappear behind the shoulders of his powerful coadjutor.

V.

Under the best system conceivable, human justice cannot be free from error. Under a system like the Russian, where all guarantees of a fair trial are wanting, it would be a miracle if innocent persons were not sacrificed by hecatombs.

Two recent cases have produced a great sensation all over Russia. In March, 1890, Postmaster Ponomareff was arraigned in Kharkoff on the charge of having embezzled a letter containing enclosures of about 20,000 rubles in value. He was found

[1] *L.c.*, pp. 688–696.

[2] Decisions of 1870, no. 756, in the matter of Koosenkova; 1871, no. 1762, in the matter of Dekhtereff.

[3] Decision of 1870, no. 38, in the matter of Seraphimoff *et consortes*.

[4] *Cf.* cases cited in note 2, above.

[5] Decisions of 1870, no. 708, in the matter of Afanasieff; 1871, no. 945, in the matter of Chirkunoff and Karpoff; 1871, no. 1676, in the matter of Golovachenko; 1871, no. 1859, in the matter of Zapesoshny.

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guilty and sentenced to exile for life to Siberia. After having heard the judgment the convicted postmaster exclaimed: "It is a sin, gentlemen; you have convicted an innocent man!" Shortly afterwards the chief witness for the prosecution, a letter-carrier, appeared before the district-attorney and confessed that he had committed the theft and had followed it up by perjury against the postmaster. The confession was examined and found to be perfectly true. This, it may be argued, was an exceptional case; and I do not desire to lay too much stress upon the mere fact that a wrongful verdict was found. But I do wish to lay stress on the fact that in the trial of the case it would have been inadmissible for the defendant's counsel to put to the letter-carrier any questions tending to fasten the crime upon him, since the letter-carrier was a witness, and a witness, as we have already seen, is protected against such questions.[1] The result in this case may have been an exceptionally unlucky one; but the practice of the courts was certainly ill-adapted to prevent a wrongful verdict.

The second case was tried before the circuit court of Vitebsk, in October, 1890. The defendant Sozonoff, a discharged army officer, was found guilty of having forged a deed. As soon as he had heard the verdict, and before he was removed from the court-room, the prisoner shot himself. Fortunately, the wound was not fatal. The case was carried up to the Senate, and by the decision of that tribunal not only was the verdict set aside, but even the indictment was quashed, on the ground that the actions of the accused, as described in the bill of indictment, constituted no offence against the law. Was this, again, an exceptional case? Possibly; but it may be remarked, in the first place, that if counsel for the defence had been allowed to demur to the indictment in the preliminary proceedings, he might have convinced the Chamber of Indictment, as he subsequently convinced the Senate, that there was no ground for a prosecution. In the second place, the main evidence in the case being expert testimony, and the expert summoned by the defence refusing

[1] Decision of 1872, no. 518, in the matter of Kozloff.

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to give an opinion without photographic investigation of the deed, the defendant's counsel requested the court to adjourn the trial in order that the deed might be so examined. This request was not granted; and later on, when the counsel attempted, in his closing argument, to compare the ordinary method of investigation by experts on handwriting with the photographic method, intimating that the latter was more scientific, he was stopped by the president, on the ground that this was an attempt to criticise the ruling of the court. This conduct on the part of the president was fully within his authority as construed by the decisions of the Senate.[1]

A year ago the *Juridicheskaya Letopis* (Juridical Annals) published a leading article upon the "frequent cases in which innocent persons are convicted." Among other things, the editorial says:

> Verdicts are found against persons who have done nothing partaking of the character of a transgression, who should not have been prosecuted at all. Remember the cases of Pyatkofsky and Firsoff, the cases of Sozonoff and others, where the accused were prosecuted, imprisoned, indicted and convicted with no effect save to afford the Senate the opportunity to declare that the whole procedure was nothing but an error, the actions imputed to the defendants constituting no crime whatever. In the long run truth triumphs; yet the mass of suffering and grief caused to innocent men remains a clamorous, irreparable fact.

The editor goes on to say that he considers

> no cases where guilt is doubtful and opinions may be at variance, but precisely those cases of absolute innocence where the actions characterized as crimes cannot possibly be regarded as anything of the sort.[2]

Yet the learned author can hardly be supposed to maintain that Postmaster Ponomareff's case was the only one of the former class for the year 1890, nor that in all the cases where guilt was doubtful truth has triumphed in the long run. Are there for this class of cases any remedies against an unfair verdict?

[1] *Vide supra*, p. 696.

[2] *Juridicheskaya Letopis*, December, 1891, pp. 541, 542.

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Even if we suppose the Senate to be anxious to hear and redress the grievances of the accused, — a disposition of which it has given little evidence, — how is the complainant to substantiate his grievances? The existing system of practice furnishes no adequate means of ascertaining the incidents of the trial or the rulings of the court. There is no stenographic report of the proceedings; and in the official protocol nothing is recorded but the naked fact that certain prescribed formalities have been observed, unless one of the parties requests the insertion of further data. Primarily, then, the record, which alone enables the Senate to control the proceedings of the court, is an *ex parte* statement by the court.[1] It is open to the parties, as I have just said, to demand the correction of the protocol; but considering the almost unlimited power of the president, and the subordinate position of the counsel, who may at any time be suspended or disbarred by the court, the defence can hardly be expected to insist very strenuously that the unlawful restraints of its rights on the part of the president shall be made a matter of record.[2] But this the Senate apparently does expect; for it has given great extension, in this class of cases, to the theory that the silence of a party is to be interpreted against him.

There is, indeed, a provision of law intended to facilitate the proof of formal errors. The following presumption is established by the code:

> The forms and observances of procedure that are not positively mentioned in the protocol as fulfilled, shall be considered to be violated [section 845].

Still even this feeble guaranty of a fair trial has vanished in practice; for the Senate permits the courts to certify *post factum* that the formalities not mentioned in the protocol were actually complied with.[3]

[1] See Decisions of 1883, no. 27, in the matter of frauds perpetrated in the Kronstadt Bank.

[2] Decisions of 1867, no. 592, in the matter of Arefieff; 1872, no. 1018, in the matter of Koribut-Kubitowicz.

[3] Decisions of 1872, no. 655, in the matter of Izhboldin; 1876, no. 97, in the matter of Ovsyannikoff.

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With this last decision, the Senate may be said to have practically abdicated all attempt to control the courts, and to have left them in their own control. It should further be noted that the protocol is not closed at the end of the trial. Two weeks is the legal term for preparing the sentence and setting forth its grounds, and it is only after the expiration of this term that it is necessary to submit the protocol to the parties. And it not infrequently happens that the protocol is not ready even at the expiration of the term for making the appeal to the Senate; nor has the defendant any right to complain of this delay.[1] This enables the court so to amend the protocol as to make the appeal altogether baseless; and it is a very open secret that the courts make use of this opportunity. Not to speak of the striking illustrations which Mr. Karabegoff cites, with names and dates,[2] in his remarkable book, we have an admission of the prevalence of the practice from the highest authority. A decision of the Senate contains the following passage:

> The protocol is not to be signed by the judges until after it has been signed by the secretary. If, however, the latter be unwilling to sign the protocol, *as it stands after it has been corrected by the judges*, without making his reservations, the court is bound to permit him to state, before his signature, the protests that he has made to them in the matter.[3]

This characteristic statement was made in 1867; and it thus appears that as early as the second year of the new judicial era attempts were being made by the courts to "correct" the protocols jotted down in the course of the trial. It requires an uncommon degree of independence and civic courage on the part of a petty officer of the court to make a stand against the judges; and such protests from court clerks as the Senate alluded to were possible only in the very early days of the new system. When the bureaucratic machine is running smoothly and the refusal of a subordinate to violate the law at the request

[1] Decision of 1874, no. 595, in the matter of Alexeeff.
[2] *Op. cit.* pp. 41–47.
[3] Decision of 1867, no. 522, in the matter of Sergooshin.

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of his superior can be punished with dismissal,[1] then the instinct of self-preservation gets the better of the sense of duty, especially if the violation of the law can by no means be discovered.

In the trial, accordingly, as in the inquest, there is no assurance of fair play except that which is afforded by the conscience of the judge — and by the independence of the jury. Of the relative value of these two guaranties, the *Magazine for Civil and Criminal Law* speaks as follows:

> It has been observed that our juries are working far more lawfully than the judges of the bench. The fundamental principles of oral and public procedure and of equal rights for both parties lose their vitality in the courts of the crown, becoming futile ceremonies of no practical consequence, inasmuch as the judges can familiarize themselves with the written proceedings and can, as it sometimes happens, supplement the information gained in the course of the trial by unlawful consultations with the parties.[2]

Hence the abolition of trial by jury has become the demand of the Russian bureaucracy. This agitation has already resulted in narrowing the field of the jury trial. It never included political offences; and since the revolutionary storm of 1878 and the following years, all offences committed by private persons against officials on duty, as well as all offences committed by officials against private persons or against the public interest, have been withdrawn from the jurisdiction of the jury. Furthermore, wherever the state of siege has been proclaimed, — *viz.* in a quarter of the territory of European Russia, including the most populous districts, — the governor-general has the power to refer every case to court-martial; and in all the rest of the empire the same thing can be done by special ukase of the Czar graciously vouchsafed in each separate instance at the request of the governor.

[1] Facts of this sort were brought to light in the trial of Mr. Witkowsky, president of the Vladikavkaz circuit court, who was indicted for abuse of power and attempted fraudulent embezzlement of property in the custody of the court.

[2] The Jury for the Past twenty-five Years, pp. 14, 15, in the *Magazine for Civil and Criminal Law*, November, 1889.

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On the other hand measures have been taken to secure juries favorable to the views of the government. The lists of jurors are drawn up by the courts and the governors, and according to their discretion. No one can complain of having been unlawfully omitted from the jury-list. And it is a well-known fact that in the cities of Western Russia where Jews form the large majority of the population, it seldom happens that even two or three Jews are drawn on a jury: usually there is none of this race. Moreover, the right of the parties to challenge jurymen was limited, in 1886, to three names on each side, whatever may be the number of the co-defendants in the case.[1]

The right of trial by jury does not extend to Poland, the Caucasus, Livonia, Courland or Esthonia; and in the northern and eastern parts of European Russia, as well as in Siberia and Central Asia, the "new" codes of 1864 have not yet been introduced, and the law of procedure remains in the same condition as thirty years ago, when it was officially characterized as incapable of any improvement save by abolition.

Finally, everywhere in Russia any individual found to be "dangerous to the peace and public order" can be exiled to Siberia for the term of from one to five years, "by administrative order," *i.e.* without trial by any court whatever.

VI.

When we review the development of the reformed courts during the past quarter of a century, certain reflections and conclusions force themselves upon our minds.

Two institutions formed the basis of the Russian police-state: serfdom in the economic, and bureaucracy in the political, field. The government of Alexander II undertook to reform the foundations of public life in Russia. Serfdom was abolished; bureaucracy was not abolished, but local self-government and

[1] The ministry discovered that a somewhat more liberal rule which formerly prevailed enabled the defence to exclude such jurors "as had manifested certain firm tendencies hostile to certain classes of crimes," and moved to amend the law as stated above.

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the separation of the judicial from the administrative power were introduced as competing factors.

The new courts were unquestionably capable, in theory at least, of becoming the most powerful instrument for furthering the political reform. The judicial sanction ultimately shapes all relations in society. The decision of the court is a particular law for the particular case under consideration; in granting or refusing their protection the courts regulate, day by day, the relations between landlord and peasant, between employer and laborer, between the citizen and the administration, between the layman and the church. The power of judicial interpretation is essentially a legislative power; and although the new law, as construed by the famous publicist Professor Gradofsky, did not give to judicial interpretation the force of authentic interpretation, yet the Senate succeeded in effacing this distinction.

The principles of Anglo-Saxon law introduced by the new codes, *viz.* equality before the law, control of the official by civil suit, supremacy of the law and responsibility of the officer, — these are thoroughly democratic. But what does bureaucracy mean? Inequality before the law, since the official is superior to the private citizen; an invariable presumption in favor of the official against the private person; secret procedure; absolute obedience of the subordinate to his principal, and, as a corollary, irresponsibility of the officer, who is simply executing the order of his chief. In short, bureaucracy means the extension of autocracy throughout the whole of the administration: every office-holder is an autocrat over his inferiors as well as a blind instrument in executing the will of his superior. This hierarchical organization is essential to autocratic rule. How can the will of the supreme autocrat prevail in a vast country like Russia, if every petty placeman is to discuss the lawfulness of the order of his official head? "To execute, not to discuss," is the motto of Russian administrative rule. The promoters of bureaucracy were therefore perfectly right in calling the new system of courts the "judicial republic."

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The opposition between bureaucracy and "judicial republicanism" is self-evident. A fierce conflict between these incompatible principles was unavoidable. We have seen the outcome. We have seen bureaucracy taking possession, step by step, of the judiciary. We have seen bureaucracy overthrowing in its victorious progress all institutions generally regarded as guaranties of justice in the courts. And bureaucracy has not yet spoken its last word.

Bureaucracy is essential to autocracy; the two must stand or fall together. That is the reason why it may be truly affirmed that opposition to autocracy in Russia has become a struggle for justice.

ISAAC A. HOURWICH.

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BASTABLE'S PUBLIC FINANCE.[1]

ENGLISH literature has not been very fortunate hitherto in the systematic study of fiscal problems. The writers prior to Adam Smith concerned themselves only with scattered questions of temporary practical interest, and dealt with them in the same scrappy manner which characterized their treatment of economic problems in general. There was, in England at all events, no true science of political economy; there could not well be a science of finance. Adam Smith, taking his cue, perhaps, from the French writers, for the first time sought to connect fiscal questions with those of social economy. In his happy way he combined the abstract discussion of certain fundamental theories with the explanation and criticism of actual conditions, avoiding on the one hand the metaphysical vagaries of the Physiocrats and on the other the plodding monotony of the German "cameralistic" compilations. But while Adam Smith gave a decided impulse to the study of fiscal problems on the continent and thus initiated a movement which resulted in the elaboration of the modern science of finance, his success in England was far less marked, although his influence on English fiscal practice was great. The mighty genius of Ricardo turned at once to what seemed the core of the financial problem. He confined himself almost exclusively to an investigation into the incidence of the chief forms of taxes, regarding a tax simply as an addition to cost of production and treating all tax phenomena as mere illustrations of changes in value. Taxation became a minor part of general economic theory. So weighty was the influence of Ricardo that even John Stuart Mill, who in other parts of his *Political Economy* pursues a quite different policy, gives in his fifth book nothing but a succinct analysis of the shifting and general effect of taxation, scarcely

[1] Public Finance. By C. F. Bastable, LL.D., Professor of Political Economy in the University of Dublin. London, Macmillan & Co., 1892. 8vo, xx, 672 pp.

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deigning to descend to the facts of everyday life or to do more than touch upon the many difficult details of principle. And although some writers did more than this, their discussions were forgotten amid the plaudits showered on Ricardo and Mill. Thus it happened that, while on the one hand we had numerous descriptive works on the chief facts of public finance, written for practical purposes, and on the other hand numerous appendices to general treatises on economics, dealing with a few abstract points in fiscal doctrine, there came to be an almost complete divorce between fact and theory. The practical writers did not concern themselves with theory, and the economists were for the most part content to work in what might be called a fiscal vacuum. McCulloch was the one important writer who made an exception, and he was not sufficiently successful to find either admirers or successors.

Another reason which may be adduced to explain the more rapid growth of the science of finance in France and Germany was their relatively inferior fiscal system. It is not the excellence but the defects of economic life that have always led to elaboration of economic theory. The shortcomings of mercantilism produced Adam Smith, the abuses of the *ancien régime* brought forth the Physiocrats, the dangers of levelling and the evils of the poor law gave us Malthus, the currency confusion and the corn laws were responsible for Ricardo. Had there been no agricultural, no industrial, no commercial troubles, we would not have had Mill and the whole host of modern specialists. So with the problems of public finance. The abuses on the continent were so serious that they gave rise to important political contests, and thus led the scientists to attempt a general clearing up. In England tax problems (with the exception of the free-trade controversy, which was far more than a mere matter of taxation) did not agitate the people to any considerable extent, and their solution was contentedly left to the practical common sense of the English statesmen. It is significant that in the one department of public finance which did seriously enter into politics, namely, that of public debts, the English writers have done better work than those of the continent. But

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the comparative excellence of the English revenue and budgetary system, combined with the general prosperity, in themselves contributed to hinder the growth of fiscal theory.

Of late years the conditions have changed. The disproportionate increase in public expenditures and the immense development of local needs have materially increased the consciousness of fiscal pressure, while the growth of democracy on the one hand and the complications of recent industrial development on the other have brought to the front questions of theoretic justice which necessitate the revision of fundamental doctrines. In England as in America, fiscal problems have become no less important than in continental Europe. And it is thus natural to expect henceforth a deeper study of the subject-matter by those who in the wilderness of confusing party contests blaze out the path of truth and progress.

Professor Bastable's book is the first scientific result of this new interest in fiscal problems in England. His volume marks a distinct epoch in the history of English economics; for it is the first comprehensive attempt to set before English readers the science of finance in its modern garb. To many it will introduce an entirely new set of discussions; and especially to the English reader who is not familiar with foreign tongues, the volume will be a revelation. It is in the truest sense a pioneer work.

To all those acquainted with the *Theory of International Trade*, published a few years ago, as well as with his recent *Commerce of Nations*, Professor Bastable is known as a clear and careful thinker, without any intellectual vagaries, and with a sobriety of judgment that distinguishes him from many of his contemporaries. The same traits conspicuously reappear in the present volume, and they are reinforced by ample evidence of accurate scholarship and great familiarity with the foreign literature. In this latter respect, indeed, Professor Bastable's book may be said to be unique; for in none of the other recent English treatises, not excepting those of Sidgwick and Marshall, can there be said to be any evidence of really adequate knowledge of foreign science. It is indeed true that a change for

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the better has recently set in in English periodical literature. But that does not in the least impair the claim of Professor Bastable's book to be considered the first real example in England of the comparative scientific method. In order to be sure of one's own conclusions, one must first know what others have said; and it is the sad neglect of this elementary rule that consigns so much of so-called scientific writing to the waste-basket.

It must not be supposed, however, that Professor Bastable is a slavish adherent of his German and French predecessors. Although he follows some of them, like Leroy-Beaulieu and Cohn, closely, the volume is by no means without independent suggestions. And it is precisely this independence of thought that invites comment and occasional criticism.

The work is divided into an Introduction and six books. The Introduction deals with the nature and scope of the science of finance and contains a sketch of its history; Book I treats of public expenditure; the three following books are devoted to public revenue (the economic receipts, the principles of taxation and the several kinds of taxes); Book V concerns itself with public debts; and Book VI deals with financial administration and control. Let us follow these in their order, picking out the few passages where criticism will not seem out of place.

In the first place it is to be regretted that Professor Bastable does not employ the term "science of finance." It is true that "finance" is used in English to include private as well as public finance, and that several books on "finance," like those of Jevons and Giffen, deal chiefly with monetary problems. But this unclearness attaches to the word in foreign languages to almost the same degree. The French speak of "*la haute finance*," Claudio Jannet's new book is entitled *Le Capital, la Spéculation et la Finance*, and the number of titles on what might be called "private" or "monetary" finance is legion. But all this has not prevented the French from using the phrase *science de finance* or *science des finances*, as the technical term for public finance. The whole matter was discussed and laid to rest years ago by Joseph Garnier. In Italy and Germany the

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matter of terminology has reached a similar settlement. It is therefore to be deprecated that Professor Bastable should not have preëmpted the phrase for English scientific use in the narrower sense. A protest should at all events be lodged against the use of the term "science of finance" to designate merely monetary science, as in Patterson's book. Sooner or later we shall conform to the usage of the French and Italians. Professor Bastable himself later on frequently uses the term finance to denote "public finance," and it is hard to see why he should then object to "science of finance."

The introductory chapter on the history of the science of finance could of course be nothing more than the merest sketch. But it gives a clear and good picture of the chief lines of development. Some mention might have been made of the discussions in mediæval Florence, which in many important points, as Ricca-Salerno has pointed out, foreshadow certain noteworthy modern doctrines. Moreover, if a fuller history of the science in England is ever written, attention will have to be paid to many writers to whom may be traced much of what is to-day current coin in fiscal discussions. To speak only of nineteenth century authors, Frend, Craig, Buchanan, Buckingham and Sayer will be able to hold their own with many of the German writers whom their compatriots delight to honor. But Professor Bastable, let us remember, was writing not a history, but a text-book.

An important point in which the volume differs from the work of Leroy-Beaulieu, to whom Professor Bastable acknowledges his special obligations, is the inclusion of the subject of public expenditures. It is a difficult and delicate task rightly to proportion the space to be devoted to this topic in a work on finance. From one point of view public expenditure is simply administration; from another point of view it is political economy in the original sense of the term. How far government should assume definite functions is really a problem of economic politics; in what manner government should actually carry on these functions is really a problem of administration. Yet almost every political or administrative act involves some outlay, and is in so

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far a fit subject for discussion in systematic works on finance. Professor Bastable has dealt with this branch of his work in a remarkably satisfactory manner, avoiding on the one hand unsuitable details, and on the other mere commonplaces. Some will nevertheless be disposed to grumble at his devoting to public expenditure almost one-sixth of the whole volume.

It is to the next three books, on "Public Revenue," that students will chiefly turn; for it is in these that are to be found most of the controverted doctrines in modern finance, and it is naturally here that the critic will be apt to take issue with the author. Professor Bastable first takes up the classification of public revenues. He sees the inadequacy of the older continental division into taxes and lucrative prerogatives (*regalia*) and correctly relegates the latter class to the limbo of "*überwundener Standpunkte.*" But he is equally aggressive in his onslaught on the class of "fees," the creation of which he ascribes to "a want of analytic power on the originator." He therefore reverts to Adam Smith's analysis and distinguishes between taxes and what Professor Bastable calls, curiously enough, in some places "semi-private economic income," and in other places "public economic income." The distinction, although not quite happily expressed, is easily grasped.

It will be questioned whether Professor Bastable is not here making a step backwards. He shows, it is true, the many inconsistencies in some recent writers on the subject of fees; and no one can deny the difficulty of rigorously distinguishing between fees and certain kinds of industrial income, or income from quasi-industrial undertakings. But does it not seem unwise to cut the knot in despair of untying it? For in refusing to acknowledge fees as a separate class, the author only creates fresh difficulties. Where, *e.g.*, shall we put school fees? They are surely not industrial income; and Professor Bastable himself would not class them among taxes. And where shall we put the charges for marriage certificates, and sheriff's fees, and copyright payments, and a host of other similar receipts? The author later on repeatedly speaks of "economic receipts" as different from fees, as well as from taxes, seeming to forget

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that in the earlier portions of the volume he includes fees in the "economic" receipts. And why speak so frequently later on of the "fee principle" as opposed to the "tax principle," if fees do not form a separate class?

Again, Professor Bastable sharply separates economic from compulsory receipts. But he fails to distinguish between different kinds of compulsory receipts, and assumes that they are all taxes. But where, then, shall we put fines and penalties? They are certainly compulsory receipts, and just as certainly not taxes. And where shall we put the immense class of special assessments, of such commanding importance in the United States, but completely ignored by Professor Bastable? They again are compulsory receipts, and yet they must be sharply distinguished from taxes, as has indeed been done to some extent in our American jurisprudence. In fact it almost seems as if the author, in the endeavor to simplify matters, has really added to our difficulties. And while gladly acknowledging the justice of some of his criticisms on the German writers, we may venture to think that the last word on the subject has by no means yet been spoken.

A similar criticism may be urged against Professor Bastable's classification of taxes. He objects to all the recent methods, and reverts to what is virtually Adam Smith's classification into primary and secondary. But it is hard to see why a tax on the property of a living person should be primary, and on that of a deceased person, in the shape of an inheritance tax, secondary; or why a tax on the business of a corporation should be primary, and the tax on the receipts of a corporation should be secondary. It is questionable whether Professor Bastable will be able to impress his views in this respect on the science. It may also be noted that, when attention is called to the distinction between direct and indirect taxes made by practical "financiers," the statement in reality applies only to French practice, and not to that in England or America.

The book on the whole exhibits a remarkably independent judgment and a singularly fresh nomenclature. But in a few instances the author allows his German models to influence

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him unduly. Thus he endeavors to introduce the German distinction between the "object" and the "subject" of taxation, meaning by the former the thing, and by the latter the person, on which the tax is imposed. Now this, I submit, is not English. When we speak of the subjects of taxation, we mean not the taxpayers (or "subjects," in Professor Bastable's language) but the phenomena subjected to taxation (or "objects," in Professor Bastable's language). And when we speak of the objects of taxation we commonly mean the aims of taxation and not the things taxed. In other words, Professor Bastable's (German) "tax object" is really the English "subject"; and his "tax subject" is the English "tax-payer" or "taxbearer," as the case may be. Again, I submit that the terms "forward incidence," "backward incidence," and "diffused incidence" are not English, and that they, moreover, confound the terms incidence and shifting. Finally, when Professor Bastable employs the word "rated tax" as opposed to "apportioned" tax, he is ignoring the equivalent term, "percentage tax," which has become quite common, in America at all events, and which clearly expresses the meaning on its very face.

But all these matters, it may be said, are of minor importance; and this I readily acknowledge. The crucial point is not so much the arrangement and terminology as the substance, and in the substance of the book Professor Bastable must meet with cordial appreciation. He modestly disclaims any pretension of having written an exhaustive treatise, and maintains that his volume is only introductory, or elementary. This is far from being the case, except in the sense that the clearness of style and arrangement renders the book eminently fitted for beginners as well as for more advanced students. He does not indeed load the work down with a useless array of statistics, but he discusses pretty much all the fundamental points of doctrine and discusses them well, — in some respects far better than has been done in much more pretentious foreign treatises.

Passing over the judicious and well-arranged chapters on the state domain, the industrial domain, and the state as capitalist, in which Professor Bastable always seeks to maintain the golden

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mean between the *laissez-faire* theories of the earlier English writers and the radical doctrines of the semi-socialistic modern German authors, we come to the more difficult problems of taxation.

A good account is given of the benefits theory, which is discarded as the general basis of taxation. Much less satisfactory is the discussion of the faculty or ability theory. Professor Bastable speaks of its "convenient vagueness," but does not really make any serious effort to give a deeper analysis of the doctrine. He tells us of Mill's doctrine of "equal sacrifice," but again does not try to correlate this with the doctrine of ability. And therefore his whole discussion of the theory of progressive taxation is not quite up to the level of recent investigation. He contents himself with the old objections made by some of the French writers that progressive taxation is arbitrary and confiscatory, non-productive, creative of evasion and repressive of accumulation, — arguments which are partly misleading, and which, in so far as they are true, apply with one exception almost as well to proportional taxation. We find, indeed, some very good criticism of what may be called the "consumption" side of the faculty theory; but we find nothing at all about the "productive" side of faculty. While one may agree in great part with the practical conclusions, exception must be taken to the mode of argument. It may be said in passing that the author overlooks one of the most curious phases of the controversy, *i.e.* the doctrines of those arch-individualists who deduce the progressive idea from the insurance theory of taxation. On other points, too, Professor Bastable is very conservative, — more conservative, even, than his English predecessors. Thus he opposes the "differentiation" of the income tax, or the distinction between different kinds of income, which was demanded by Mill and accepted by Disraeli; he seems to be opposed to graduation in the inheritance tax, which was also demanded by Mill; and he even differs from the conservative French writers in disapproving of progression in the income tax as a counterpoise to regression in other taxes.

On the other hand, the discussion of the incidence of taxation

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is remarkably good. The author shows in a general chapter the weakness both of the diffusion theory and of the absolute theories of Smith and Ricardo, and calls attention to the complicating conditions of modern society. While the solution here is chiefly a negative one, each of the chapters in the book on the several kinds of taxes contains a section devoted to a study of the incidence of the particular tax considered. It might perhaps be urged that the analysis is not rigorous enough in the case of the taxation of profits, that not enough attention is called to the distinction between monopolies and competitive undertakings, that the house tax is viewed only from the characteristically English point of view as being assessed on the occupier, and that the general capitalization theory is not brought into due prominence. But the treatment as a whole is vastly superior to that found in most of the manuals on public finance.

Perhaps the least satisfactory part of the work to American readers will be the discussion of universality of taxation, or double taxation. Double taxation is of two kinds, that by the same authority, and that by competing authorities, — the first class being subdivided according as the duplicate tax is levied on the same subject-matter or on the same taxable person. It may indeed be said that the last kind is of importance chiefly in federal states, like Germany, Switzerland and the United States. And that is no doubt the reason why a book written primarily for Englishmen pays so little attention to it. But even here international relations are of increasing importance, and deserve more than the half-page allotted to them by the author. Professor Bastable's conclusion itself is not beyond criticism. "The more modern solution," he says, "would be that the income tax should be levied by the country of residence, the land or property taxes by that of situation." But how, if the income is derived from land? or, conversely, if the property consists in intangible goods? But whatever we say about this, it is much to be regretted that the author absolutely passes over the other form of double taxation. He is kind enough to refer to some articles by the present writer; but those articles deal with only

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a small section of the subject, as applied to corporations. The simultaneous taxation of property and income, or property and profits, together with the whole contention as to the treatment of debts, mortgages and interest on debts in connection with property, produce or income taxes, — all these topics belong to the discussion of duplicate taxation and need a far more thoroughgoing treatment than they have received. Even if there was no space for details, the main points of the controversy should at all events have been outlined. The absence of all such discussion from Professor Bastable's book will somewhat impair its value for American students.

Book IV, on the several kinds of taxes, shows the author at his best. A broad knowledge of the facts of taxation in all the important countries and a wide acquaintance with the special literature enable Professor Bastable to give a concise and clear account of actual conditions as well as of the chief movements for reform. He has of course no sympathy with the single-tax idea as a panacea, and he suggests a judicious combination of the three principal forms of taxation as best calculated to reach substantial justice. Of course, where so many details are given, it is impossible to avoid some slips. Thus the *centimes additionnels* to the French land tax (page 386) were not merely for local purposes; the New York tax (page 530) is not a direct inheritance tax, but rather a direct tax on successions and bequests of personalty only; the Swiss taxes on property and income (page 420) do not "mark the connection between the sum of wealth and its annual return," since it is the avowed object of the income tax in almost all the cantons to avoid the taxation of the "annual return of wealth" already taxed; nor, again, can we find in the Swiss system of progressive taxation any "moderation of rates" (page 433), when we remember that some cantons tax the higher incomes almost ten per cent; the account of the Prussian tax on industry (page 410) does not give the "present" arrangement;[1] the account of the English trade licenses (page 407) is misleading, as all the local licenses, with the exception of half

[1] Perhaps the chapter was written before the recent changes of 1891, although the income-tax law of the same date is noticed farther on.

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a dozen minor classes with a yield of about £150,000, are connected with articles of consumption, like liquor, tobacco and sweets, or with expenditures for luxury, like servants, dogs, carriages, game licenses, *etc.*, the purely industrial taxation being far less than would be inferred from the text; Decker did not propose a license tax on the consumption of commodities (page 310), but a single house tax (although the name he gave to it, "a general excise," misled many writers, including Adam Smith); the treatment of the income tax does not bring out clearly what income really consists in; and the statement that a land tax should not take indebtedness into account (page 391) seems to rest on too literal an acceptance of the very dubious distinction made by the German advocates of *Ertragssteuern.* Finally the treatment of indirect taxes is so concise as to leave no room for the discussion of important questions of policy, as for instance the different methods of taxing spirits or the choice between *ad valorem* and specific import duties.

In so far as the practical problems of American taxation are concerned, Professor Bastable shows his good judgment in opposing the suggestions for a direct income tax to replace our local tax on personal property. He also wisely deprecates the taxation of gross receipts of corporations as the ideal solution of the problem. The statement on page 424 that "the most promising sources of state revenue seem to be the real property and the license taxes," is obviously a slip, as it does not tally with the sentiments expressed in other parts of the book. And Americans will take exception to the assertion (page 327) that "taxation of inheritances is unsuited for a community where the family is the unit of society and property is really held by corporations, not by individuals." There is an obvious discrepancy between this and the author's statement (page 303) that "taxation of corporations is the taxation of their members." This last statement again is unclear. Do the "members" of a corporation mean its stockholders or its bondholders, or both? The discussions of these questions, which have led to some of the most perplexing problems of public finance in America as elsewhere, ought not to be so lightly "eliminated."

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This review has already attained such length that it will be possible only to mention the books on public indebtedness and the budget. The space devoted to them, however, is so small (a little over ninety pages to public debts and about thirty pages to the budget) that very frequently there is room only for the merest suggestions. In the matter of the budget, especially, there is a vast amount of material in the United States, important for both facts and principles, which has never yet been worked up and the discussion of which would greatly enrich the subject. Professor Bastable's book on the budget is based chiefly on Stourm's well-known volume.

Finally, we must deplore the lack of an index, for which only partial compensation is found in the very full table of contents.

I have not hesitated to call attention to some of the minor defects in Professor Bastable's volume or to indicate a belief that it will not be found absolutely satisfactory for the American student or the American class-room. But we must remember that it was written primarily not for Americans but for Englishmen. And it is to be hoped that no one will leave these criticisms with the idea that the book can be lightly cast aside. On the contrary, it is not only by all odds the best book for English and American readers that has yet appeared on the subject, but it is destined in many respects to sound the key-note of future scientific discussion. It is so wholly admirable in arrangement, so accurate in statement, so catholic in temper, so sagacious in judgment and so broad in erudition, that it may well serve as a model not only for writers on public finance but for authors of economic text-books in general. The public, no less than Professor Bastable, is to be congratulated on the appearance of so masterly a production.

EDWIN R. A. SELIGMAN.

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REVIEWS.

Le Crime Politique et les Révolutions; par Rapport au Droit, a l'Anthropologie Criminelle et a la Science du Gouvernement. Par C. LOMBROSO et R. LASCHI; traduit de l'Italien par A. BOUCHARD. Two volumes. Paris, Félix Alcan, 1892. — 8vo, xiii, 296, 428 pp.

This is a noteworthy work — one which must be read by every student of crime and of public policy who hopes to form scientific opinions on such forms of violence as have become familiar in connection with anarchism and nihilism, and one that cannot be neglected by the historian who would interpret the revolutions of the past in the light of the completest knowledge. It is in every way a work more worthy of the distinguished author of *l'Homme Criminel* than was *The Man of Genius*, noticed in this QUARTERLY in September.

The authors quote a remark of Littré's, that political crime has become in modern societies the most considerable kind of crime in its effects on public fortunes, international relations and common morality, and that it deserves to be studied as a case in social pathology. Regarding their subject from this point of view, they have undertaken to determine the distinguishing marks of political crime, and to ascertain by statistical and other inductive methods the conditions which increase, diminish and vary its phenomena. Everywhere, from antiquity to the present time, political crime has been severely punished; yet, as the anthropologist sees him, the political criminal is altogether another kind of man from the criminal-born. It is true that the class of born criminals furnishes its contingent to political crime, but the true political criminal does not make war on life and property from purely egoistic motives. His purpose is to make the conditions of life better for his fellow men, and he is therefore not a criminal from the ordinary social and moral point of view. Is he, then, an offender from a political and juridical standpoint only? Readers who have watched the tendency to use the results of criminal anthropology as a means of shielding criminals from punishment, might expect an affirmative answer to this question, and might look for an ingenious argument to prove that, in these matters, governments and courts are all wrong. But this would be a serious misconception of Lombroso's real views. The fact that our authors are studying political crimes as phenomena of social pathology is in itself an assurance that they regard it as an evil that must be recognized and

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dealt with as such. Though easily distinguished from ordinary crime, it is yet essentially crime, and like other aberrations of conduct varies with such physical conditions as temperature, moisture and soil, with the ethnical composition of the population, and with individual factors.

What, then, is it that constitutes the essential criminality of political crime? Is the man who successfully resists and overthrows a bad government a patriot, and is another man who violently attacks but fails to overthrow an equally bad government a malefactor, who ought to be hanged for his trouble? That hard-headed old gentleman, Thomas Hobbes, would certainly have said: "Exactly so." Lombroso and Laschi also say: "Exactly so"; but they work out their answer through a study of the physiology of society, and not as a corollary of sovereignty. Social phenomena are but aspects of the conservation of energy. Therefore social changes are a function of the time through which the process of change can extend. Social organization and the natures of men can be transformed but slowly; there is always inertia to overcome. On the psychological side, accordingly, we find a gradation of feeling from an extreme antipathy to new things to an extreme fondness for them. These poles of feeling our authors designate by the convenient names, *misonéisme* and *philonéisme*. The vast majority of men and women are misoneists. Misoneism dominates morals, religion, science, art and letters, no less than politics. Consequently philoneism accomplishes absolutely nothing if it does not convert and transform some of the resisting misoneism. To attack the old order of things by violent measures before the conditions have been made ready for real progress is essentially anti-social, and in that sense, criminal. Common sense has always attributed different moral qualities to revolutions and rebellions, and has been perfectly right in so doing. But the modern attempt to distinguish between revolution and evolution is on the other hand wrong. True revolution is always evolution. Revolution is possible only when evolution has substantially transformed society. The authors enforce their point with an illustration which puts their meaning beyond possible doubt. They themselves, they say, in earlier times would have been counted among political criminals because, as partisans of criminal anthropology, they seek to effect a great change in old juridical ideas; and even now, they would be actually political criminals if, with audacious impatience and by means foreign to science, they should seek to precipitate the application of their views.

Most of the first volume is devoted to an examination of the relation of physical and social conditions to political crime and revolutions. These chapters are a valuable contribution to demographic sociology. Every statistician knows how many are the possibilities of error in such an investigation, and how extremely difficult it is to use either the

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method of agreement or that of difference in tracing causes. Yet, when we find the curves of revolutions and revolts following temperature curves almost or quite as closely as do those of deaths, births, illegitimacy, suicide, homicide, *etc.*, it is impossible not to conclude that the collective action and the individual action of men are governed by the same external influences. The conclusion is enforced by an examination of yet other facts, some of which are admirably presented in a series of colored maps. Thus in France monarchism is misoneism, and republicanism, philoneism. A political map of the country shows that republicanism is distributed in rather close conformity to hilly and mountainous topography; it is distributed in yet closer conformity to density of population, and to industrial as distinguished from agricultural occupations, and most closely of all to the distribution of genius.

The second volume is devoted to the influence of individual factors and to a consideration of the best means of preventing political crime. These, in the judgment of the authors, must be for the most part social, economic and political reforms, rather than repression and punishment. It would be useless to attempt any criticism of these volumes, because the only criticism of any value must grow out of further investigations along similar lines. They are volumes to be studied with care and to be tested, as time goes on, by further research.

FRANKLIN H. GIDDINGS.

The Colonial Era. By GEORGE PARK FISHER, D.D., LL.D., Professor in Yale University. New York, Charles Scribner's Sons, 1892. — 12mo, xviii, 348 pp.

In filling the market with "Epoch Series" and diminutive handbooks upon historical subjects, it may be presumed that publishers know the popular taste and are catering to a demand. It is to be hoped that the diffusion of these little volumes, of varying degrees of excellence, may at last contribute to the introduction of better school text-books in history, to more intelligent methods of teaching and studying history, and possibly to the development of a popular habit of reading history.

This book concerning the colonial era is one of the best of its kind. It augurs well for "The American History Series" that its introductory volume should attain so high a character, and the names of Professors Sloane and Burgess and President Walker convey a promise that the rest of the series will be of unusual merit. Professor Fisher has told the story of the colonies with the same painstaking accuracy with which he recently wrote the story of the world. Facts are condensed skilfully and with a pleasing lucidity of expression. There is a perspective to

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the narrative, and there are glimpses of a wide horizon which in a work of this kind evoke a feeling of grateful surprise. The heroic tale of New England, which is so often overtold, is altogether the best part of the book, but it fills only a little more than one-third of the space, probably no more than its proper proportion. The history of the Middle and Southern colonies has never before been so adequately treated in a volume of this sort. There was a time when the youthful scholar groped his way through chapters on the history of Virginia, Pennsylvania, New York and the Carolinas as if enveloped in a dense fog. In Southern history, between the settlement and the French and Indian War there was a blank, misty expanse, broken only by isolated peaks of fact like Bacon's Rebellion and the names of a few royal governors. Professor Fisher's narrative will give the student an idea of continuous progress from John Smith to Governor Dinwiddie, although he fails, as perhaps any one must fail, to make the story of the Southern colonies interesting.

A broad presentation is the predominant characteristic of the work, but the effort to generalize and to include has been perhaps too successful. The work reads like an abridgment of some larger book from which the vital juices of illustration and philosophical discussion have been too carefully squeezed out. There is a possibility that the book is too condensed and pragmatic to suit beginners in history, and that it can serve the advanced student only as a prelude to his more serious labors with the very authors from whom Professor Fisher has drawn his account. It is impossible, in the very small space devoted to the subject, to tell the history of New England in the eighteenth century as completely as Professor Fisher tries to tell it. The result of the attempt is too much like a lifeless epitome. Thus, on page 240, the author proceeds from an account of Governor Benning Wentworth's administration in New Hampshire directly to the following paragraph:

> Jonathan Law succeeded Talcott as governor of Connecticut. The colony sent more than four thousand men to the siege of Louisburg and the next year contributed a thousand men to the unsuccessful enterprise against Quebec. Connecticut was strongly opposed to the Albany plan of union, in 1754. This was the last year of Roger Wolcott's administration as governor. He was succeeded by Thomas Fitch.

Why should either student or reader be bothered in a volume of this kind with this single mention of Law, Wolcott and Fitch? Talcott is equally useless lumber and is introduced elsewhere only as the "successor" of some other obscure worthy. In a review of colonial history nothing could be of less service than a list of Connecticut governors, unless it be a list of the nonentities who governed the royal colonies.

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Most of these gentry, whether they were of importance or not, are dragged by name into these pages.

This employment of details which are of merely local value and significance is perhaps encouraged by the unfortunate though customary habit of describing each colony in a separate chapter. Professor Fisher's use of this amorphous method is probably as effective and suggestive as it could be made. He divides the history of all the colonies by the revolution of 1688, which is certainly a natural division. In the seventeenth century, the century of settlement, he considers the colonies in the order of their inception. In the eighteenth century, the age of development, he considers them in the order of geographical position from north to south. New England history in the seventeenth century the author further divides at the foundation of the Connecticut River colony. This demarcation suggests the recognition of a political significance in the origin of that colony, though the allusion is not explained clearly in the text. It is doubtful, however, whether the formation of the Connecticut colony indicates the close of any period of New England history. That affair was really a struggle in which the whole of the first generation of Puritan settlers was directly interested. A more natural line of separation lay along the adoption of the Halfway Covenant after 1657, when the older leaders had generally passed away, or even in the period of readjustment with the mother country in 1662–64.

It seems a little odd that the volume should fix 1756 as the date of the close of the colonial era. This remarkable assumption may be due to the special exigencies of this series. That year did witness the beginning of a war in Europe, but the French and Indian War was already in progress here. Surely the "colonial era" of these states extends at least to 1774, and possibly to a later time.

There is a concluding chapter on "Literature in the Colonies." Brief and detached as it is, it shows the author at his best. Like the character sketches and the too short descriptions of social life which are scattered throughout the volume, it is crammed with the results of close thinking and good judgment. Errors in the statement of facts are not to be found. Professor Fisher is careful, even when in a hurry. It is almost ungracious to raise a single question mark against the observation on page 250 that Judge Delancy was "the leader of the popular party" in New York. Without ample explanation such a remark is likely to mislead.

The volume contains three maps, which are neither better nor worse than we have reason to expect. Professor Fisher's bibliographical note is a model of its kind, and the book is equipped with an index and a chronological table.

CHARLES H. LEVERMORE.

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A Half-Century of Conflict. By FRANCIS PARKMAN. Two volumes. Boston, Little, Brown & Co., 1892. — viii, 333; viii, 395 pp.

In the dainty preface with which Francis Parkman sent forth eight years ago his *Montcalm and Wolfe*, he called attention to the fact that the publication of that book as the concluding one in the series on "France and America in the New World," had left a period between 1700 and 1748 still untouched by him. "When this gap is filled," he added, "the series . . . will form a continuous history of the French occupation of this continent." It is the author himself, then, who instructs us how we are to describe the book now before us: it is a book written to fill a gap.

These words intimate at once the limitations and the triumphs of *A Half-Century of Conflict.* That particular half-century, surely, no American historian would have chosen for its own sake; and this American historian has evidently been drawn to it, not by his taste or by his enthusiasm, but by his sense of duty, the austere purpose of a life-time, the sacredness of a great literary resolve, the scholar's ideal and the artist's passion for completeness.

The unattractiveness of the period for purposes of historic treatment may be accounted for, in part at least, by the wide local dispersal of its events, their seemingly accidental, fragmentary and flitting character, their apparent lack of connection or even of meaning, the absence of great men and of great deeds, — in short, by the inexpiable curse of commonplace. Let it be admitted, then, that in the subject of this book are difficulties which no genius could overcome: that no industry or insight, no gift of historic interpretation, no enchantment of style, could cause the story of these forty-eight years to be so impressive or so instructive as is the story, told by this same master, of those years which hold for us *La Salle and the Discovery of the Great West*, or *Count Frontenac and New France under Louis XIV.*, or, above all, *Montcalm and Wolfe.* Having admitted so much, it is probable that the most self-restrained critic will be inclined to confess that every conceivable difficulty in the period which genius could subdue seems to have been met by the genius of this author. Very likely there are other books of Parkman's which one would rather be reading than this book. Perhaps, however, no other book of his can give us, when all the difficulties of the situation are taken into account, so striking an indication of his literary power. Elsewhere he has been more attractive; nowhere else has he overcome so many temptations to be unattractive.

In this book, then, it can fairly be said, Parkman has done, if not his most captivating work, at least his most difficult work. He has here pushed his way, an uncompanioned pioneer, through a vast and tangled

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wilderness of events, — events miscellaneous, obscure, widely separated in space, apparently unrelated, petty, disorderly; and he has discovered the true principle of order and of unity which binds them all together, and which makes them, as here depicted, stand out before us as essential, even if subordinate, parts of a very imposing world-drama. The two volumes on *Montcalm and Wolfe* portray the final struggle in the long contest between England and France for the possession of North America, — giving us, of course, the stately and tragical climax of the entire history. On the other hand, these two volumes lay before us, with the most consummate skill in arrangement, with the most exquisite tact in delineation, the vast detail of facts which filled the half-century immediately prior to that final struggle, which made that final struggle a necessity, which even foreshadowed its result. To the philosophic student of American history this book contributes data without which the fate of three races upon this continent, and the correlation of mighty forces in its national life, would be left inadequately explained.

The story of this half-century, as here told, may be said to fall into two great parts: the first stretching from the beginning of the eighteenth century to the year 1713, the year of the Peace of Utrecht; the second stretching from 1713 to 1748, when at last "the colonists found a short breathing space against the great conclusive struggle of the Seven Years' War." In the first part, the action and interaction of events in North America find their true co-ordination and import as responding to the passions and the vicissitudes of the European War of the Spanish Succession. In the second part, the Peace of Utrecht is seen as merely ushering upon the stage "a threefold conflict for ascendency in America, — the conflict for Acadia, the conflict for northern New England, and the conflict for the Great West." Under this simple analysis a chaos of confused and meaningless incidents rises into order, and takes on the dignity of historic significance.

If we are to speak of the scientific quality of the work given to the world in these two volumes, it is enough to say that an author who in the course of more than forty years had never published anything ill-studied or ill-composed, has not here in any respect fallen below his own standard. Here, once more, we find that completeness and even affluence of documentary outfit, that patient and perfect mastery of the whole case in all its ramifications and in every particular, that serene fairness of judgment reached after an unbiassed consideration of all conflicting claims, and finally, that superb union of moderation and fearlessness in the announcement of results, which have from the first won for this historian the thorough confidence of every reader who was not himself already a thorough partisan.

It is quite impossible, in this place, even to indicate the many direc-

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tions in which this new book of Parkman's throws new light upon a period of American history never yet very well understood. For the comprehension of race-types — French, Indian, English, American — this book adds much material to that already furnished by the author's previous labors. Here one finds fresh and startling proofs of the acuteness and the boldness of French statesmanship in its designs upon this continent; while of French foresight, possibly no more effective instance has anywhere been given than that which is here brought out, wherein, so early as the year 1710, the writer of a *Mémoire sur la Nouvelle Angleterre* makes the amazing prediction, which sixty years later began to be literally fulfilled, that if France shall disappear from North America, then "ces diverses provinces se réuniront, et, secouant le joug de la monarchie Anglaise, s'érigeront en démocratie." Furthermore, with evidence both new and rich, the author presents to us again the contrast between the French and the English types of colonial government and colonial person; the ineffable hatred and dread of the French establishments in America which filled the souls of the English colonists; the vigor, self-denial, ability and courage with which those colonists, especially in New England, planned and toiled and fought for their deliverance from the French peril; the deterioration in character of the Jesuits in America in passing from the seventeenth century to the eighteenth; the superficial and the fruitless nature of the religious work which the Jesuits wrought upon the Indians; finally, the author's favorite thesis, that the philanthropic conception of the Indian is one which can be held by no man who ever comes into actual contact with that most intractable biped.

Upon the whole, *A Half-Century of Conflict* rounds out to completion a great literary and scientific undertaking, which cannot fail to have a permanent interest for the people of the three nations who are the chief subjects of it, — Englishmen, Frenchmen and Americans. It would be a real misfortune if the accent which is so commonly laid on the literary charm of these brilliant histories were to lead us to underestimate their value as mere contributions to knowledge; for it is a perfectly quiet account of them to say, that they are essential to any real understanding of much American history prior to 1763, and of not a little American history since that time.

Yet it is of the purely literary charm of these histories that one would prefer to speak, in closing, whatever he might have to say about them. In Francis Parkman there remains to us, amid the hurried and amorphous literary scrap-work of our day, an historian who expresses the old-time sense of leisure, thoroughness, precision, and grace of style, — the last one of that noble quartette of American historians who held to a lofty ideal respecting mere form in the presentation of their work.

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Perhaps Parkman will yet be ranked as the greatest of the four. At any rate, he is perhaps the only one of the four whose work will not need to be done over again, and who in his own field can have neither rival nor successor.

MOSES COIT TYLER.

Monographs and Essays. By WILLIAM FRANCIS ALLEN. Memorial Volume. Boston, printed for the Editors [D. B. FRANKENBURGER and others, Madison, Wis.] by G. H. Ellis, 1890. — 392 pp.

When the history of the university renaissance in America during the last quarter of a century comes to be written, the name of Professor Allen, of the University of Wisconsin, will find in it an honorable place. To that elevation in the character of academic instruction and academic study which has at last created true universities where before were but finishing schools and professional seminaries, William Francis Allen contributed in no small measure. He did not, perhaps, greatly worry himself or others about "methods"; he did not try to turn the average American graduate into a poor copy of the German *privat-docent;* nor did he yield to the temptation to invite the general public to look at what he was doing. He recognized the limitations of his material, and set himself quietly to do the best he could under the conditions. He was indeed somewhat too unobtrusive: one of our modern young specialists would doubtless have persuaded the governing body to allow him to exchange the chair of classics for that of history in something less than eighteen years. What, nevertheless, Professor Allen did at the University of Wisconsin was to substitute the intelligent study of historical questions and the scholarly use of historical material for the school-boy recital of text-book lessons; and what he — more perhaps than any one else — did for historical study generally in America was to de-provincialize it and bring it into touch with the best modern thought of Europe. This he did by the long series of reviews he contributed to the New York *Nation*. Certainly no English journal has made so sustained an effort as this American publication to keep its readers abreast of the best historical work of Germany and France; and the *Nation* was in this connection but another name for Professor Allen. Professor Allen left behind no literary monument at all worthy of his great powers. The explanation is to be found, not so much in his arduous university duties, as the writer of the introductory memoir suggests, as in his never-ceasing activity as a reviewer, — a reviewer not only of important treatises, but of innumerable school handbooks; not only of works in a particular field, but in many and widely different subjects. The very excellence of these ephemeral criticisms is their condemnation. No man has

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sufficient mental energy to carry on honest and thoughtful labor of this kind side by side with sustained original investigation. Without further particulars of Mr. Allen's life, we cannot venture to criticise such an employment of his knowledge and ability; but whatever the explanation may have been, it was a great pity.

There was, however, one subject to which Mr. Allen turned again and again during the last fifteen or sixteen years of his life, and in which he displayed a vigor and independence in the use of the scanty materials at his disposal which seemed to promise a considerable achievement, and did indeed produce new and valuable conclusions. This was the subject of early English land tenure; and it is the papers on this subject collected in the Memorial Volume lately issued which give it its scientific interest. The Wisconsin Academy is doubtless doing good service to its state; but until the communication of the results of historical research is better organized than at present, papers published in its *Transactions* are practically non-existent for the great majority of scholars. Their union and publication in an accessible form is therefore very welcome; and the book is one which ought to find its way to all who are really interested in the subject.

A number of papers scattered over a period of sixteen years, toward the end of which so epoch-making a work as that of Mr. Seebohm has appeared, are sure to contain much that recent research has placed in an altogether new light. For instance, the explanation in one place of a virgate (following, no doubt, a chance remark of Thorold Rogers) as eight acres, and the use of the term "farm" in many places obviously in its modern sense, show that like every one else Professor Allen did not fully grasp the open-field system until Mr. Seebohm explained it to us. But there is not a page which is not still worth reading; and on some important parts of the general question, Professor Allen anticipated his European fellow-workers in laying down propositions that are now coming to be generally accepted. Thus as long ago as 1873 he argued that the tenants in socage and the freeholders of the thirteenth century were simply "specially privileged *villani*" — that they were a class that had grown up since Domesday, and not simply, as Archdeacon Hale and others used to think, *omitted* in Domesday. Then again, in 1877, Professor Allen anticipated one of the most recent conclusions of Professor Maitland and the new school of English legal historians, in urging that the court baron bore the marks of a feudal court and not of a prehistoric popular assembly.

But Professor Allen's contributions to agrarian history have a significance beyond that of the particular conclusions at which he has arrived. He was among the earliest of those who are now turning to the details of early social organization, not in the spirit of the antiquary, but in the

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spirit — to use an objectionable but useful word — of the sociologist. And he was absolutely the first among American scholars to realize that even in America there has been no breach of continuity; that the New England town was but the English town of the seventeenth century, planted amid new conditions; and that neither it nor its offspring can be fully understood until we penetrate the mystery of the origin of mediæval serfdom.

W. J. ASHLEY.

Les Archives de l'Histoire de France. Par CH.-V. LANGLOIS ET H. STEIN. Première Partie. Paris, Alphonse Picard, 1891–1892. — xvii, 608 pp.

This work is the first of a series of manuals of historical bibliography which the firm whose imprint appears upon the volume proposes to publish. The object of the series is wholly praiseworthy and it affords another proof of the thoroughly intelligent interest which the French are taking in their national history. That part of the work before us which has already been issued gives, with introduction and explanations, a brief survey of the national archives of France, including under that term not only the documents deposited in the Hôtel Soubise, but those remaining in the offices of the various ministries — War, Marine, Foreign Affairs, *etc.* In it are also described the archives of the departments, of the municipalities, of the hospitals, and at the end a great variety of collections still in the possession of the courts, of various administrative bureaus, of ecclesiastical bodies, and of private individuals throughout the country. Reference is made to the printed catalogues and calendars of these archives, to those still in manuscript, and to the most important historical works and articles in learned reviews which have been based on research made in the archives. In the two parts still to be published the authors will in like manner describe the French archives deposited in foreign countries and those to be found in the great libraries both of France and of other nations. The authors are experts in archivistic science and administration. Their information has been obtained by personal inquiry and by correspondence with local archivists, and in all cases accuracy has been sought. A vast amount of information has been compressed into these pages concerning the material condition, the administration and the contents of the archives. A thoroughly reliable handbook is thus being prepared for the use of investigators in every department of French history.

In a previous number of this QUARTERLY (March, 1892, p. 181) attention was called to the wealth of historic material in the French national archives. But they contain only a fragment of the entire manuscript

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sources. When this manual is completed it will be possible to obtain a vague conception of the nation's records in their totality, so far at least as they have survived the ravages of time and of revolution. It will probably be found that at least among the archives Paris has not been the whole of France. For the illustration of all periods of her history the materials in the departmental and other local depositories appear to be quite as important as those in the care of the central government. In amount they are of course vastly greater, both for ancient and revolutionary France. For example, in the departmental records are the *procès verbaux* of the provincial estates, the cartularies of many of the abbeys, the records of the seneschalships, bailiwicks, provostships, mayoralties, seigniories, admiralties and other local subdivisions of the feudal régime. These are supplemented in a thousand ways by the records of the bishoprics and chapters and those of the noble families. In the municipal archives will be found the charters and franchises granted by the kings and the seigniors, the proceedings of the municipal councils, and of the officials in the various departments of commercial administration. To the red books, the black books, the yellow books, the green books of the towns the student of municipal history must go as the ultimate sources of information concerning city domains, fairs, markets, trades, public works, taxes, courts. In the municipal archives he will also find the records of the parishes, the registers of births, deaths and marriages, of many of the hospitals, convents, church buildings and charities. In them, as well as among the departmental records, he will find a great variety of material concerning the first revolution, such as proceedings of local clubs and of representatives of the central revolutionary authorities *en mission*. Among the municipalities he will find the records of Aix, Marseilles, Dijon, Perigueux, Toulouse, Reims, Amiens, Arras and St. Omer exceptionally rich. Among the departments those of the South (ancient Languedoc and Provence), and of the North, particularly of ancient Flanders, are the richest. The administration of most of these has been improved during recent years and their manuscripts have been increased by private gifts. Some of the local nobility and clergy have shown themselves very liberal in this regard.

The object of the authors of this work has been not only to prepare a catalogue, but to influence for good the administration of the French archives. The problem, how a nation can best secure the records of its past and preserve them for the use of its scholars, is not easy of solution. The archives of France, as of every other modern nation, are scattered in public and private collections through the length and breadth of its own territory, while not the least important part of them are in the keeping of foreign governments. It would surely serve the

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interests of scholars, if all of these in the originals could be gathered into one vast collection at the national capital. Untold labor and expense would be saved to students, and it would no longer be thought necessary to write a volume or brace of volumes to serve as the casket for each scrap of new material which may be found. The student of history under the present competitive system is buried beneath a flood of new books, and in many cases it must be said that they individually add very little to the sum of human knowledge. Centralized archives would not prevent the publication of the results of imperfect investigations, or make it possible to write a nation's history once for all, but they would check the excessive multiplication of books. It was the plan of the revolutionists and of Napoleon to institute such a system for France; but, as conceived by them, it involved the confiscation of the manuscripts both of local and foreign archives and had to be abandoned.

Since 1815 no effort has been made to transfer the departmental or communal archives to Paris, but a central administrative bureau has been created, provided with inspectors, and placed by the decree of March 21, 1884, under the control of the minister of public instruction. At present under its officials the work of cataloguing both national and local archives, and, as far as possible, consolidating the latter, is being earnestly prosecuted. Much has already been done to overcome the carelessness and lethargy of local authorities and to awaken the interest of private individuals, but much still remains to be accomplished. The object of the authors of these volumes is still further to awaken public interest in the archives and to enlist it in support of what seems to be the reasonable policy of the government. Following the opinion of Moreau, historiographer of France at the middle of the last century, they believe that it is not possible to collect in a central depot even copies of all the national records; but they urge that it is both possible and in the highest degree desirable to gather together for constant use catalogues of all the archives — whether national or local, whether lodged at home or abroad. This is the plan which is being slowly carried into execution by the English government. Its calendars, for foreign papers, and the reports of the Historical Manuscript Commission, for private collections, contain what the French mean by an *inventaire*. Were that plan fully executed for local as well as national archives, the demand of the authors for centralization would be satisfied. To go further than that would, in their opinion, call up serious administrative obstacles. The present work is intended to supply the need of a general survey or inventory till the government shall have met the want in a more thorough and satisfactory manner.

HERBERT L. OSGOOD.

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Städte und Gilden der Germanischen Völker im Mittelalter. Von KARL HEGEL. Two volumes. Leipzig, Duncker & Humblot, 1891. — 8vo, 457, 516 pp.

Within the past five years there has been a marked revival in the study of gilds and municipalities. This has been particularly noticeable in Germany, where no other branch of constitutional history has, in that short space of time, been the object of so much research. A recent writer (G. von Below) ascribes this activity mainly to a tardy recognition of the importance of the subject; for "the question of the origin of municipal government unites as in a focus the most important questions of mediæval constitutional history." The old theories that solved the problem by going back to Roman times or to the mediæval manor are now receding from the foreground. The gild theory of Wilda, Gierke and Brentano still has many adherents, but seems also to be losing ground. Sohm (*Entstehung des Städtewesens*, 1890), with his customary learning and acuteness, ascribes the origin of the mediæval municipality to market privileges granted by the crown, town law growing out of market law. Gothein (*Wirthschaftsgeschichte des Schwarzwaldes*, 1892) adopts Sohm's main conclusions. Von Below (*Stadtgemeinde*, 1889; *Stadtverfassung*, 1892) has recently supported and greatly strengthened G. L. von Maurer's derivation of the civic constitution from the rural community, and has done much to undermine the above-mentioned artificial theories. Hegel, by independent research, has reached substantially the same results as von Below.

Of all these treatises the last is, in certain respects, the most remarkable and the most welcome. Hegel has long been well known as an *Altmeister* in the domain of municipal history. His work on Italian cities gave him a European reputation before many of us younger writers were born. Now at the age of seventy-eight he fitly crowns his long career of usefulness by giving us a general history of the mediæval municipalities and gilds of the Germanic nations — England, Denmark, Sweden, Norway, North France, Belgium, Holland and Germany. He considers each of these countries in turn, examining first the origin of its municipal institutions in general, then devoting separate chapters to certain typical cities, and finally summing up his general conclusions. The only departure from this plan is in the case of Germany; here the introductory account is omitted, and only the cities of Low Germany receive attention. The wide scope of the work makes it particularly welcome. For the first time we have a comprehensive survey of the whole subject, written by a trained historian, who knows how to turn to account the vast literature concerning gilds and municipalities, and at the same time to control and supplement the information thus obtained by a critical examination of the sources.

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In an introductory chapter on the origin of gilds in general, he accepts the view of Wilda that this institution is the heathen sacrificial banquet of the early Germans, modified by later Christian influences; the idea of religious brotherhood, so prominent in mediæval gilds, was derived from Christianity. He rightly observes that they had no historical connection with the analogous Roman *collegia;* "the similar need of union for common action called similar associations into existence among the Germans, as in earlier times among the Romans" (I, 10).

Throughout his book Professor Hegel takes a firm stand against the assumption that the municipal constitution emanated from the gild; he believes that the latter exerted an influence upon the later development, not upon the origin, of the former. His cogent arguments in proof of this ought to convert many of the adherents of the gild theory.

In a concluding chapter, entitled "*Vergleichende Betrachtung*," which sums up the results of his whole work, he indicates the characteristic traits of municipal development common to all Germanic nations, and also the peculiarities of each country. He lays down the general proposition that the city developed from the village by a gradual process of growth. The former emerged from the latter as soon as the community received from the king or lord a separate judiciary of its own. It was the pre-eminent privilege of the burghers to be tried in their own court.

While the author's main conclusions are correct, some of his statements are erroneous or questionable. Too much space (I, 447–449) is devoted to the refutation of an hypothesis regarding the origin of craft gilds which he wrongly ascribes to the writer of this review. I have never knowingly advocated the view that these fraternities were derived from the gild merchant; Professor Hegel is right in asserting that both kinds of associations, when first mentioned in England, existed side by side, and that each had an independent origin. The point emphasized in *The Gild Merchant,* chapter vii, and misunderstood by Professor Hegel, is that in *later* times various trade societies emerged from, or rather took the place of, the old gild merchant; the opinion is there expressed, not that the *gilda mercatoria* gave birth to the earliest craft fraternities, but that the *later* development and multiplication of the latter dissolved and displaced the former.

There seems to be no good ground for accepting the statement that the German municipal regulation concerning the freedom of serfs after a year's residence in a city was derived from England (II, 507). In the enumeration of early civic codes (II, 506) there is no mention of probably the earliest, the *Leges Burgorum* of Scotland. The author says that the Frankish gilds are the oldest (I, 4; II, 501); but in

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another place (I, 20–24) he admits that gilds existed in England in the time of Ine, at least half a century before they are mentioned in Germany. His view that William the Conqueror opposed or suppressed the gild system as a wide-spread and dangerous Anglo-Saxon institution (I, 56, 64, 111), is supported by little or no evidence. The cnighten-gild of London was not dissolved at the time of the Norman Conquest (I, 56), but in 1125. "Lot" and "scot" were not distinct conceptions in English towns (I, 64). The Winchester gild regulation in the form given in I, 86, is based on a wrong translation of the original text. The last gild celebration at Preston was in 1882, not 1862 (I, 96). Where Thomas of Worcester is said to have made a payment to King Stephen for the aldermanship of the gild merchant (I, 96), read "Thomas of York" and "King Henry I." The Berwick Statutes did not originate in 1283–1284 (I, 97), but in 1249–1294.

It would not be difficult to point out other errors of this sort, especially in the chapters concerning England. When, however, we consider the wide range of the subject, we must accord the book much praise for its general accuracy, scholarly execution and sound results. It fills a great void in historical literature, and will stimulate to further research in the field which it covers.

CHARLES GROSS.

The Platform: Its Rise and Progress. By HENRY JEPHSON. Two Volumes. New York and London, Macmillan & Co., 1892. —456, 483 pp.

Mr. Jephson's volumes have been received with marked favor by the popular press, and most naturally so; for they tell in a clear, interesting way, if somewhat diffusely, the story of the growth in England of popular meetings and stump speaking as a political force. For students of political science and sociology, also, they have a value; not that they contain new material or advance new theories, but because they disclose hitherto overlooked groupings of familiar facts. As a study in constitutional history, the work may be described as an attempt to show that the differentiation of what Mr. Dicey has called political sovereignty from what he calls legal sovereignty has been accomplished through the growth of a new and special organ of the constitution, namely, the platform. Parliament continues to be the legal sovereign; but the actual power to compel obedience — the obedience of Parliament in particular — has practically been obtained by the people, who a hundred years ago were not even in any true sense represented in Parliament; and the means employed have been public meetings and platform discussions, kept up in defiance of government and of alleged law until those who

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participated in them made themselves the ultimate source of government and of new law. That some of the acutest legal minds less than seventy-five years ago could not conceive the possibility of effecting such a change within the forms of law, is a fact from which political science may measure an astonishing progress, as surely as physical science measures progress from the time when men could not conceive the rotundity of the earth. As late as 1819 Sir C. E. Carrington, whom Mr. Jephson describes as "a certain irascible Tory ex-chief justice of Ceylon," wrote:

> What! is our constitution, the labor and the pride of ages, so vitally unsound as to cherish and organize and keep in perpetual action within itself the elements of its own destruction? Does the legislature admit and sanction an extraneous appellate jurisdiction, to correct, control or vituperate its measures and to deny its authority, in public assemblies called for that purpose at the pleasure of every popular declaimer? I trust that the constitution of this mighty kingdom is not thus impeachable of folly.

The beginnings of platform influence as a political force Mr. Jephson places in the latter half of the eighteenth century. There had been public meetings from time immemorial, but not in the true sense of the word political meetings; strictly speaking they were administrative, duly called by a parish or county officer, and participated in only by a class, or by the dwellers in a particular administrative district. Evidently the habit of administrative meeting could not in itself grow into the practice of assembling in vast general meetings, called together by anybody, attended by voters and non-voters indiscriminately, by men from one or another parish or county indifferently and from any rank in society, and all for the purpose of asserting a claim to political rights, criticising Parliament and demanding reforms. But the habit of mass-meeting, while yet unknown in politics, had developed for religious purposes under the revival preaching of Wesley and Whitefield, and the germ of popular participation in politics had long existed in the habit of petition. It was therefore the blending of these three habits under the pressure of new economic and social forces, that created the platform.

A new power like this could not establish itself without a tremendous struggle. Conservative interests could not help taking the ground that the constitutional right of public meeting was fully exhausted by meetings of the traditional administrative sort. This was evidently the thought of Justice Carrington in the remarks above quoted. Canning expressed it even more distinctly in Parliament, when he declared that it was "no part of the contrivance of the laws that immense multitudes should wantonly be brought together" at the will of "unauthorized" and "irresponsible" individuals.

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The law prescribes a corporate character. The callers of these meetings have always studiously avoided it. No summons of freeholders, none of freemen, none of the inhabitants of particular places or parishes, no acknowledgment of local or political classification.

Mr. Jephson does not in terms point out the distinction here made between administrative and political meeting, and seems not to have fully realized its significance; the reader is even left in doubt whether Mr. Jephson at any time in the course of his investigation perceived that this was exactly the distinction that his narrative implied. As a matter of fact, Carrington's and Canning's position was neither obstructionist nor reactionary from their point of view, but a perfectly rational interpretation of constitutional law. When they spoke it had yet to be demonstrated that public political meetings, wholly non-administrative in origin and character, could have any standing in English law. They certainly could not claim the common law warrant of an existence whereof the memory of man ran not to the contrary, and there was every reason to expect that statutory law would deal with them in a hostile spirit, as in fact came to be the case. It will be seen that Mr. Jephson has raised a most interesting problem in political science without distinctly stating it as a problem and therefore, of course, without discussing it thoroughly. What the platform had accomplished when, in 1825, on the expiration of the Seditious Meetings Prevention Act of 1819, it became a recognized component of the constitution, was the establishment in law and practice of *the right of non-administrative initiative* in political affairs. In a scientific sense this is the precise meaning of popular government, and for the scientific student the whole significance of the platform centres about this point.

If from this technical point of view Mr. Jephson's work is disappointing, his treatment of the causes that made the platform a political power sufficient to transform the character and the law of the constitution, is in every respect admirable. The influence of historic events like the John Wilkes episode, the popular discontent of 1779 and the Gordon riots, the French Revolution, the Catholic Emancipation agitation, Chartism and the anti-corn-law agitation, is shown in conscientious detail, while in the background appear those larger influences — the great economic movement inaugurated by power-machinery and the factory system, and the marvellous quickening of popular intelligence which followed upon the rapid growth, freer movement and commercial activity of the population. Showing clearly how political forces are generated by non-political activities, and tracing, step by step, the development of popular self-consciousness and capacity for volitional association, the book is a useful contribution to sociology.

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Since 1825 the progress of the platform has been rapid. To its earlier functions of expression and discussion it has added functions of control, until now, in Mr. Jephson's opinion, it must be regarded as a principal feature of the English constitution, distinguishing that polity from all forms of government in the past and from the governments of all other European states in the present. No comparison with American politics is made, but the American reader will be satisfied, before he closes the book, that all comparisons of cabinet and congressional governments must be incomplete and even erroneous which neglect the relative positions of the platform in these two systems. In this country the platform acts upon government in some ways more indirectly than in England, in other ways much more directly, and on the whole perhaps not less effectively.

FRANKLIN H. GIDDINGS.

La Société Moderne. Etudes Morales et Politiques. Par J. G. COURCELLE SENEUIL. Paris, Guillaumin et Cie., 1892. — 12mo, 543 pp.

For what has really proved his valedictory, the distinguished French publicist made a pretty faithful gleaning of notes read before the Academy of Moral Sciences, papers from the *Journal des Économistes* and fragments hitherto unpublished. They cover the whole field of the political and moral sciences, and range from the consideration of the ultimate principles of politics and ethics down to particular administrative questions, such as the recruitment and promotion of civil servants. The book betrays too plainly its method of making; for, although co-ordinated subjects are thrown into juxtaposition, no impression of unity and system is produced. This is not saying that there is no unity and system in M. Courcelle Seneuil's thought. Quite the contrary is true. Wherever we open the work, whether the topic falls upon politics, ethics, pedagogics, history or administration, we find the same circle of ideas, the same fundamental principles. This, in fact, makes the chief interest of the book. It gives us, on a great variety of topics and in a great variety of forms, the ideas of what has been and is to-day the leading school of French political philosophy — the orthodox.

It may be not uninteresting to note (at least as landmarks) some of these leading ideas. For instance, we find in the first essay, on the necessity of co-ordinating the political and moral sciences, that the object of investigation or study in these sciences is man willing and acting, *i.e.* human activity. But the author repudiates the idea that the social sciences are in any way an extension of biology or anthropology, and declares that all analogies drawn from the latter sciences, especially

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the doctrine of the struggle for existence and of race characteristics, are premature and false. The division of sociology into a science and an art is familiar, but the further classification which groups philosophy, political economy and history as science, and politics, morals, the law and pedagogy as art, is peculiar and betrays, perhaps, a slight bias due to the author's devotion to economic studies. The ultimate authorities or sanctions in social science are defined as follows. Man is ruled at first by his appetites, afterwards by his education (hence the importance of pedagogy). As man advances in civilization the conflict of wills engenders public opinion, or the spiritual power, and from this spiritual power and inferior to it is born the coercitive or political power (government) established in all civilized societies. God exists, the materialists to the contrary notwithstanding, but it is not necessary that our knowledge of him should be exact or exhaustive. Man possesses free will; and although God in his designs has assigned a destiny to man, all our efforts to attain a knowledge of it have been in vain.

With this foundation of a "spiritual power" and a God-given but unknown destiny for the human race, it is evident that most practical problems of politics, ethics and economics will be solved in accordance with the author's notion of "what ought to be." The end of government, for instance, is to serve the common interest of the citizens. The common interest is justice; it is to render good and exact justice that governments are ordained (pages 75 and 90). And a little further, more specifically: "One sees clearly to-day that the mission of government is to assure peace to the governed, to permit them to labor, and '*laisser faire*' their enterprises, their exchanges and their contracts." The grand principle of justice is "*suum cuique*." And finally, speaking of the democratic society towards which men have been marching for a long time, he says (p. 85):

> La liberté du travail et des échanges, l'inviolabilité de la propriété privée, l'égalité devant la loi sont, dans cet idéal, les principes fondamentaux, reconnus par les fondateurs de la grande République américaine et par ceux de la première République française.

This sentence gives the keynote to the views of M. Courcelle Seneuil. It is easy to see how he will discuss the rights of property, the relations of employer and employee, the questions of free trade, of taxation, *etc.* Always temperate and moderate, with the most exalted religious and ethical notions, he carries, however, into the consideration of all the relations of human life the principle of individual freedom and individual responsibility. One can only say that the history of France for the last fifty years and her present condition go far to justify the necessity, or at least desirability, of preaching this gospel.

RICHMOND MAYO-SMITH.

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Histoire des Doctrines Économiques. Par E. ESPINAS, Professeur à la Faculté des lettres de Bordeaux. Paris, n.d. (1892). — 12mo, 359 pp.

Professor Espinas' volume has a singular recommendation. He tells us in the preface that students not satisfied with the previous French histories of political economy can use his book with confidence, because "nous avons lu les ouvrages dont nous parlons"; but he immediately qualifies this statement with the proviso: "tous ceux du moins de quelque importance." This is a rather amusing commentary on his French predecessors. Professor Espinas evidently found the perusal of the "important works" so difficult that he confined himself almost exclusively to French writers. The volume contains no indication that there was any political economy in Germany before Thünen. While it is doubtless true that the Germans unduly magnify some of their countrymen's work, it really seems as if a history of political economy should mention at least a few of the writers contained in Roscher's two volume account of economics in Germany. And while a few of the English writers who influenced Adam Smith and the Physiocrats are mentioned, a number of important names are omitted. For the nineteenth century, again, the only English writers referred to are Malthus, Ricardo and Mill.

It will be seen, therefore, how inadequate and narrow the book is. It is indeed an improvement on Blanqui's history, because Blanqui devoted rather more attention to economic history than to the history of economics and was withal rather inexact. For the earlier history of political economy up to Adam Smith, Professor Espinas' work is, indeed, in many respects to be commended as a clear and succinct exposition of the chief currents of thought. But here again all his secondary authorities are French, and he does not once refer to the many elaborate monographs in German, Italian and English on various phases of economic doctrine in classic and mediæval literature. Probably because there does not happen to be any French work on the economic ideas of the Romans we find that the author utterly ignores the economics of the *Corpus Juris*. Finally there is the greatest possible lack of proportion shown in the arrangement. Cantillon for instance, whom it has become the fashion rather to overestimate, has eighteen pages devoted to him, while Steuart is not mentioned at all and Malthus and Ricardo are disposed of in about four pages each. For the French class room, Professor Espinas' work will perhaps be timely and serviceable, but for English readers there will be very little not already contained in the works of Ingram and others.

E. R. A. S.

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Methods of Industrial Remuneration. By DAVID F. SCHLOSS. New York and London, G. P. Putnam's Sons. — 280 pp.

Besides making a very readable book, Mr. Schloss has kept his text true to his title. Throughout his 280 pages he has adhered to the subject strictly and with great fairness. It will be impossible for the careful reader to avoid learning a great deal about different methods of remuneration employed in modern industry. If, however, he desires to know what methods are best and which of those now existing are in closest accord with the natural trend of economic development, he will find this book uninstructive. Its conspicuous merits lie in its brief, lucid statements and illustrations of various methods of payment. The writer's mind seems to be a perfect mirror of the facts which have come to it regarding the different phases of the subject, and faithfully reflects these to the reader; but there does not appear so much as a suggestion as to right thinking upon the wages question. To be sure, he gives some pleasant and valid criticisms of the various methods of payment, but they are so evenly divided that all methods appear alike objectionable. When he has passed criticism upon all impartially, from time wages to co-operation, one naturally expects to find suggested a method of distribution that is free from these objections; but this is entirely lacking. It is not difficult to read between the lines, however, that there is lurking in the author's mind some notion that a new social order must supersede the wages system, and that an unobjectionable method of industrial distribution can be inaugurated; but of the notion he carefully avoids giving any definite expression.

He distinguishes the different kinds of wages as time wage, piece wage, task wage and collective progressive wages. It is needless to say that these various distinctions in the modes of payment are unnecessary to an intelligent discussion of the wages question. Indeed, the very attempt at such nice classification indicates a lack of grip upon the economics of the wage problem. "Time wage" is simply a new phrase for day wages, — a useless change. By "task wages" he designates the arrangement under which a man works by the day but is liable to be discharged if he fails to do a certain amount; but this condition exists substantially in all day wages, and so affords no occasion for special consideration. Piece wages of course differ from time wages in that under piece work laborers are paid by the unit of product instead of by the unit of time. Here Mr. Schloss sees what was pointed out in *Wealth and Progress*, — that time wages and piece wages are substantially the same thing to workmen, as wherever the two methods are both employed laborers of similar ability secure practically equal incomes. He says (page 22):

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If it is asked what it is that decides what is "sixpenny worth of work" in each instance, it is for our purposes sufficient to say that whatever considerations govern this matter apply in an identical manner, whether this "sixpenny worth of work" be the output produced in, say, an hour by a man employed at sixpence an hour, or the output of a man making at a piece wage of one penny per article six articles, each of which it takes him ten minutes to make.

But what he does not see is the economic cause for their similarity. He sees that to answer this question involves a discussion of the law of wages, which he decides "would be out of place here"; yet this is the very core of the whole question.

But on this point Mr. Schloss is not unlike other writers on this subject, and he shows a very much better spirit than most of them. Nor is it surprising that he should wander a little here; for at this unsettled though crucial point in the principle of economic distribution, economists have long been in a general fog, both in Europe and this country, and even the recent efforts of Professors Böhm-Bawerk, F. A. Walker and J. B. Clark have not perceptibly cleared the sky. Had Mr. Schloss seen that cost is the chief determining factor in price, his task would have been greatly simplified. It would then have been easy to see that the cost of furnishing labor, which is the cost of living, is the determining factor in wages, and that as a matter of fact both day wages and piece wages are governed by this law. Day wages are a direct and piece wages an indirect expression of it. Indeed, he came very near the truth of the matter when he said that wages must furnish

the amount of money or money's worth which the average operative requires in order to provide himself and his family with the average amount of commodities and comforts accepted by the men of his class as their "standard of comfort."

The author thinks "piece-wage foremanship" should be abolished, because to make foremen's wages depend upon the amount of work performed by the laborer leads to the sweating system and other abuses. He does not see, however, that piece-work foremanship has in the long run the same influence as any other kind of piece work, namely, to adjust the income to the standard of living, or, what is the same thing, to equalize it with day wages for similar work. The evils under day-work payments are no less than those under piece-work payments. The truth is that the only real objection to either is the small amount laborers finally receive. The abuses under either system diminish as laborers' wages rise and their individuality is developed. Nobody oppresses highly paid, intelligent people; and it is doubtful if anybody can prevent the oppression of ignorant, low-paid people. The real difficulty after all is not in the method of remuneration, but in the quantity of it.

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Mr. Schloss's discussion of the actual operation of profit sharing and co-operation is both interesting and instructive. He shows that in all cases where it has been tried co-operation has signally failed to abolish the wages system, and, moreover, that it has nowhere even increased the income of the laborers. He quotes extensively and with approval Miss Potter's *Co-operative Movement*, in which the failure of co-operation in which the workmen manage the business and divide the profits is demonstrated from the history of mills where the system was introduced; and he calls especial attention to the evidence that some of the societies paid lower wages than those current in the trade. The latter was the case throughout the whole district of the Rosendale Valley, which was the most pronounced co-operative district in Lancashire. Wages were proverbially lower there than in Bolton, Blackburn and other trade-union districts where no co-operative factories were situated. On page 219 Mr. Schloss concludes as follows:

> The results of our examination of the practice of industrial co-operation show us that by far the greater part of industrial co-operation is carried on upon the ordinary wage system, the employés being altogether excluded from participation in profits; while that in most cases in which profit sharing is practised by workingmen co-operators, the financial position of the workmen employed in a co-operative workshop is seldom indeed to any appreciable extent improved by the receipt of bonus, must be abundantly clear from the facts and figures above adduced. Nor must it be forgotten that, wretchedly unfavorable as is the appearance presented by our statistics, the figures would have looked still less favorable if we could have included the bad year, 1887, in regard to which the Co-operative Union has thought it best to omit the figures; and the reader must again be reminded that no account is here taken of those co-operative societies worked upon a profit-sharing basis which have altogether failed to meet with financial success — a misfortune which has befallen *about seventy-five per cent of such societies*.

And after two more chapters devoted to the details of co-operative experience he says, on page 230:

> To sum up in the words used in his presidential address at the last (1891) Co-operative Congress by Mr. A. H. Dyke Acland, M.P.: "The ideal co-operative society, where all the capital is owned by the workers, is admitted to be an impossibility, except in the rarest cases."

The case against profit sharing and co-operation as affording any adequate solution of the labor problem is well presented, and if facts are to have any influence, it is well-nigh conclusive. This is the more impressive because Mr. Schloss is a Fabian socialist, with a strong bias against the wages system, and in favor of some form of socialistic production.

GEORGE GUNTON.

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Industrial Freedom. A Study in Politics. By B. R. WISE. London, Cassell & Co., 1892.—xxxi, 372 pp.

The former attorney-general of New South Wales has in this book attempted to restate the argument for free trade in a form suited to the needs of the time. The book is not brilliant, as is Sumner's *Protectionism* or Henry George's *Protection or Free Trade.* It cannot be called trenchant or epigrammatic or original. But the author is patient, painstaking and exhaustive, and altogether the book is likely to prove one of the best defences of free trade ever published. The plan of the book is well considered. The analysis is so accurate and minute that every ramification of argument is followed out to the end. The style is clear, sober and logical. The tone is courteous and candid. The method is that of deduction, occasionally verified by history and statistics. The author holds throughout to the broad highway and refuses to descend to details, quibbles or the passing phenomena of the moment.

The first half of the book, devoted to "The Revival of Protection" and "Preparing the Arena," contains all that is new in the work. The author opens with an admirable *résumé* of the differences between the protection of to-day and that of fifty years ago. He shows that the problem has changed and that the various interests are differently ranged. He admits that many of the old arguments are obsolete, while others need restating.

> The requisites of production stand to each other in Australasia and America in such an abnormal relation, that the abstractions of the English economists have often to be qualified before they can be taken as an explanation of facts.

Unaware that the lines of controversy have changed, these economists have "fallen into the error of repeating old truths to opponents who do not deny them." Free-traders have made a mistake in looking only at the production of wealth; while, as with wider suffrage political power descends to the masses, it is necessary to lay more stress upon distribution and wages. By their *laissez-faire* opposition to factory laws and other measures to protect labor, they have incurred the hostility of the working classes. By offering free trade as a panacea, they have seemed to ignore the evils of the competitive system and have thereby drawn the fire of reformers, humanitarians and socialists. Finally, free trade has suffered by being identified in Australia with the land monopolists and in America with the slaveholders.

After surveying "The Revival of Protection" and analyzing the various causes which have operated to bring this about, Mr. Wise devotes ninety pages to "Preparing the Arena" of controversy. In view of his

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former admissions, we are surprised to find him regarding as "economic" only those arguments pertaining to the *production* of wealth. All other arguments are "political." He examines the criticism suffered by the orthodox political economists, and, while admitting that political economy is deficient in the theory of consumption, still insists upon its authority in the free-trade controversy. An examination of the nationalism of List and Carey leads to the conclusion that "every attempt to found an economic science on any other basis than that of individualism inevitably becomes empiric, both in its scope and method." The conclusions of the nationalists "establish no general principle." Mr. Wise ignores the possibility that exchange values may not be identical with social values. He finds the argument based on national welfare vague and unscientific, without considering that national welfare, though indefinite, is yet a very real thing. Mr. Wise falls back finally into the old error of concluding that because certain elements are hard to take account of, therefore they are to be omitted.

The relation of free trade to *laissez faire* is next examined. The author repudiates *laissez faire* and admits that free trade must seek other support. He is confident that it can be justified without invoking the maxims of individualistic politics, while protection cannot be justified even on grounds that justify socialism. He promises to avoid the perplexities that beset the problem of the man *versus* the state. Despite these promises, however, we find that further on he cannot forbear to fire off the individualistic ammunition furnished by Sumner and George.

The rest of the book considers the "Economic Argument" and the "Political Argument." Here we pass smoothly along the beaten highways of deduction, though zeal occasionally overcomes discretion. The author reckons three losses as due to protection: (1) That of leaving paying industries for non-paying ones; (2) that of making up to the protected producers the loss by this unprofitableness; and (3) the loss to consumers by increased cost. Here we have a single loss mysteriously figuring as three. Regarding wages, the author is a residualist. As by machinery and other appliances the product of a given number of laborers is always increasing, he concludes that wages must be steadily rising. This *naïveté* in assuming that the capitalist will not claim an additional share for his new machinery, is entertaining. Despite the passages quoted approvingly in the early part of the discussion to prove his sympathy with labor, the author ends by taking up with the cheery optimism of Mr. Atkinson and Mr. Wells. With the best of intentions he does not show a familiarity with the problems of distribution that can excite our confidence.

Nor is he more successful in treating of consumption. Starting with the frank admission as to its importance, he ends by egregiously mis-

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understanding Professor Patten's searching analysis of the effect of protection upon consumption and ultimately upon production and rent.

On the whole, the book has many merits. We have in it one of the best statements of the free-trade position yet attempted. But it disappoints in not ending as it starts out. It promises more than it can perform. It attempts frankly to recognize the recent currents in economic thought, but it ends in stating, with perhaps a differently distributed emphasis, the long familiar arguments for free trade.

EDWARD ALSWORTH ROSS.

Der Grossbetrieb. Ein Wirtschaftlicher und Socialer Fortschritt. Eine Studie auf dem Gebiete der Baumwollindustrie. Von Dr. GERHART VON SCHULZE-GÄVERNITZ. Leipzig, Duncker und Humblot, 1892. — 8vo, 281 pp.

England still remains the favorite field for detailed economic investigation on the part of young German students. Dr. Schulze-Gävernitz made his scientific début in 1890, by a remarkable study of English social doctrines in his *Zum Socialen Frieden* (reviewed in this QUARTERLY, vol. vi, p. 348). He now leaves the domain of abstract discussion and appeals to the facts of industrial life, in order to test the accuracy of certain doctrines. His methods are the same, his style is equally clear and engaging and his results will no doubt command the same assent and popularity as those of his previous work.

The mooted point of doctrine is this: What is the connection of high industrial development with the welfare of the laboring classes? What is the importance to the community of a high or a low standard of life among the laborers? Are high or low wages the best for a country competing with other countries? Dr. Schulze-Gävernitz gives an interesting sketch of the history of the doctrine. On the one hand Petty, Temple and Houghton uphold the necessity of high taxes on consumption and of long hours of work, in order that prices of food may be high and the laborers compelled to work; since cheap food and leisure imply laziness and intemperance among the laborers. On the other hand Child, Postlethwait and Foster demand high wages and cheap food, from the standpoint both of the laborers and of general industry. The author then discusses Adam Smith's and Ricardo's theories of wages and shows once again how the latter became the foundation of modern socialism and the iron law of wages. Finally he calls attention to the recent change of theory, ascribing the main importance to Brentano's onslaught on Ricardo. The modern theory, he thinks, as supported by the "practical men," like our Atkinson and Schoenhof, holds that high

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wages are the concomitants of low cost of production, and that the highest industrial development involves the advance of the standard of life. The author puts the query whether the old theory is always false and the new one always true, and intimates that each may be true in its time. Brassey, one of the stanchest advocates of the new theory, denies its application in India. He tells us that whereas in England high wages increased the efficiency of the laborer, in India, on the contrary, his experience was to the effect that higher wages decreased the efficiency of the laborer. Dr. Schulze-Gävernitz thus resolved to test the question for himself and to ascertain how far the new doctrine is true under modern conditions.

The occupation he takes as a test is the cotton industry. The larger part of the work is thus a history of the development of the cotton trade and its situation at the present time. For the history reliance is placed chiefly on the works of Ure Baines and Guest, as well as on the various Parliamentary committee reports. His account of the present situation is largely based on the results of personal investigation. Attention is called not so much to the statistics of industry, as to the influence of the highly developed occupations on the various social classes. The author finds that at the beginning of the century there was much that seemed to give a basis for Ricardo's and Karl Marx's conclusions. Modern industry on a large scale did indeed at first tend to enrich the employer and impoverish the workman. The first stage of *la grande industrie* did imply high cost of production, dear labor and dear capital, high prices and high monopoly profits, low wages and class antagonisms. But this was only the first stage, due to the disruption of old ties and the demolition of the old industrial fabric. International competition brought about the second stage. Continual cheapening of production became absolutely necessary. Cheapening of production involved cheap capital and cheap labor. But cheap labor now no longer meant low wages. For higher wages meant greater power of consumption, and greater consumption meant better work and less cost. This explains the rise of wages, the relative fall of profits and the introduction of labor-saving machinery, which is the sign of all highly organized industries. In other words the great industries of modern times, instead of showing, as the socialists imagine, that the rich are becoming richer and the poor poorer, are really the best guarantee of the increase of wages and the fall of profits. Modern industry carries within itself the solution of the social problem.

Dr. Schulze-Gävernitz seeks to base his conclusion on a careful comparison of the cotton industry with other less developed industries, and of English with German conditions. Wages in the cotton industry in Lancashire *e.g.* are far higher than in the less advanced silk industry in

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Macclesfield. The whole social condition of the silk laborer is far lower than that of the cotton laborer — about what the latter was thirty to forty years ago. And the relations between employer and employed show the same difference. Again, the German cotton operative is in a far lower condition than his English brother; but in the silk industry the conditions are reversed, and the German standard of life is higher than the English. England's great superiority lies in those industries where raw material plays a relatively small, and labor and capital a relatively great rôle. But wherever an industry on a large scale becomes a truly international one, producing in large masses, profits will gradually fall and wages gradually rise. The salvation of the laborer will therefore be found in the development of capital and highly organized industry.

E. R. A. S.

The Effects of Machinery on Wages. By J. SHIELD NICHOLSON, M.A. New York, Scribner's Sons, 1892. — 143 pp.

This is an essay which took the Cobden prize given by the University of Cambridge, England. It is excellently printed, with double leads, on heavy-toned paper, and indeed bears all the marks of a prize essay. It was first written in 1877, and it well illustrates the confusion into which England had been thrown on economic questions, and especially as to wages, by Mill's abandonment of the wages-fund theory and the announcement of Jevons's doctrine of final utility.

Mr. Nicholson appears to be somewhat conscious that a disturbed state of mind is reflected in the book; for in his preface he asks not to be regarded as a pessimist, evidently feeling that his text would be likely to create such an impression. He makes repeated announcement of his adherence to the historical school, but seems not to have reached any philosophic view of the history of his subject. The neutralizing influence of his repeated qualifications of statements reminds one of Professor Marshall. He takes pains so to balance advantages against disadvantages as generally to leave the reader in doubt as to what his definite views on the subject are.

He sees, as no one could help seeing, that machinery has been of great benefit to the community in cheapening the necessaries of life, but he struggles very hard to represent these advantages as neutralized, in case of the workingmen, by a commensurate increase of toil and oppressive conditions. In support of this view he quotes that oft-repeated pessimistic assertion of John Stuart Mill, that "labor-saving inventions have not lightened the toil of any human being," — a statement which never was true, and the citation of which at this late day by a professor

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of political economy only shows how slowly economic science is progressing in Edinburgh. And as if that were not enough to reveal how completely he is out of touch with both the history and the science of the subject, he approvingly quotes Ruskin, who always hated machinery, as Comte did economics, because he never understood it.

Mr. Nicholson's sympathy with the laboring class is commendable. His recital of the hardships they endured in the early stages of the factory system shows that he is at least emancipated from the cold-blooded indifferentism so prevalent among the early English economists; but his strong sense of the evils that arise from machinery and his tendency to ignore the constant and conspicuous socializing and humanizing influences it exerts in the community, prove his failure to appreciate the economic and social importance of industrial differentiation and the concentration of capital. And to miss that is to miss the very core of economic progress. He appears not to have entirely got rid of the perverted notion so common among sentimental writers, that somehow or other there lurks in capital and machinery a subtle and ever-active enemy of labor. While some capitalists are undoubtedly oppressive, the productive use of capital is always beneficial to laborers and the community, though not always to the capitalists.

Despite the many apt things the book contains, it cannot be regarded, on the whole, as making any contribution to the subject it discusses. The writer slights what is fundamental and permanently beneficial in machinery, and magnifies what is merely transitory. The influence of his discussion is to throw doubt on the advantages of what is obviously in the natural trend of economic development, rather than to explain the principles which promote that movement.

GEORGE GUNTON.

Il Socialismo negli Stati Uniti d'America. By S. COGNETTI DE MARTIIS, Professor of Political Economy in the University of Turin. Turin, Typographical Publishing Union, 1891. — 303 pp.

This is the most convenient single account yet written of the socialistic and quasi-socialistic movements now in progress or hitherto begun in the United States. Part I treats of "Religious Socialism." Under this head are considered the German-American religious communities — Harmonists, Zoarites and the rest — the Shakers, the Mormons, the Oneida Community of Perfectionists, and the Fraternity of the New Life. Part II has for its subject "Philanthropic Socialism," and discusses in four chapters respectively, New Harmony, the "Phalanxes," as the author calls them (meaning the communities like Brook Farm, originated mainly under the influence of Fourier), Icaria and the Pro-

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gressists. A special chapter notes the causes for the ill-success of socialism of this kind. Part III takes up "Radical Socialism," and sketches the career of the International trades unions, the Knights of Labor and the condition of the working classes in the United States. Part IV is entitled "Scientific Socialism," and is almost entirely devoted to Henry George and his views.

Much valuable information is gathered in these pages. The author uses all the sources, including United States public documents and articles in our periodical press. Touching some of the religious communities studied, he brings forward a few new and interesting facts, though to well-read Americans the book will be valuable mainly as a conspectus. The great railway strike of 1877 is described in full, and its importance relatively to the total industry of the country is somewhat exaggerated. The book is, and was probably meant to be, historical and general rather than critical in the sense of throwing light on any principles of socialism. This may account for the fact that the author totally ignores the socialistic writings of Laurence Gronlund, which are of an expressly scientific cast and far more representative of socialism proper than any treatises to which de Martiis refers. There seems also little propriety in ranking Henry George as a socialist, less still in making him a type or leader of the school. He certainly agrees with the disciples of Rodbertus and Marx in many particular propositions; but in his characteristic views of society and industry he is as hostile to them as Ricardo, Bastiat or de Molinari could be.

E. BENJ. ANDREWS.

Co-operative Credit Associations in Certain European Countries, and their Relation to Agricultural Interests. Prepared, under direction of the Statistician, by EDWARD I. PETERS. Published by authority of the Secretary of Agriculture. Washington, 1892. — 12mo, 117 pp.

Distributing Co-operative Societies. An Essay on Social Economy. By Dr. LUIGI PIZZAMIGLIO. Social Science Series. Imported by Charles Scribner's Sons, 1892. — 12mo, xii, 185 pp.

Mr. Peters declares that "the purpose of this report is to give information respecting a kind of co-operative societies which, in a large number of cases, have been of great benefit to agriculturists." He has collected data concerning those countries of Europe wherein co-operative loan associations and *Volksbanken* have been most active, — a territory which may be said to represent to-day the sphere of the influence of Schulze-Delitzsch. In Germany, in Austria-Hungary, in Italy and in Russia, Mr. Peters has examined the state of affairs during the years 1889 and 1890, drawing chiefly on le Barbier's *Crédit Agri-*

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cole en Allemagne and Comtor's *Banques Populaires* for his information. The most space is devoted to Germany, and the author has collated a most useful series of tables of statistics, taking pains to verify all the averages and percentages in these tables, many of which have gone the rounds of the literature on this subject with a faith in their correctness which is absurd. The remarkable total result of these calculations may be of interest to those who have not followed the enormous increase in such societies in the last few years. At the close of 1889, the latest date at which figures for all the five countries could be obtained, there were 3623 associations — exclusive of those of the Raiffeisen type — employing in round numbers a total capital of $350,000,000. Mr. Peters's report is conscientiously and intelligently written, and it strongly suggests the possibility of a similar system of banking in the United States.

Not the least remarkable feature of the growth of co-operation in Italy is the part played therein by men of education. Luzzatti, Vigano and Wollemborg have linked their names forever with the banks they have founded and carried through the struggles of infancy. These are the names of practical men; but not less useful in Italy have been what the French call the *coopérateurs en chaire*, — a body whose efforts, directed chiefly from the vantage ground of university lecture-rooms, have been to analyze and classify the results of the practical experiments going on about them. The success of this class has been distinguished, and one who attempts to make a scientific study of any phase of co-operation to-day finds himself straightway turned to the works of such writers as Rabbeno, Gobbo and Cossa for much of the most enlightened discussion of his subject. The sowing of these men is now realizing a valuable harvest, as may be seen in the monograph of Dr. Pizzamiglio.

In Italy, as elsewhere in Europe, if we except only France and Austria, wherever co-operation has spread, the example of the Rochdale Pioneers has been followed *con amore*. Dr. Pizzamiglio lays down for his thesis a strict adherence to the rules which are to-day celebrated as those of Toad Lane. His regard for the English system has closed his eyes somewhat to the practical results attained in other lands and by different systems. For instance, on page 111 he declares that "distributive societies have got on better in England than in any other country," fairly ignoring the statistics of the German society at Breslau, which in 1890, the year in which he writes, enrolled 30,598 members. The largest society in England, that of Leeds, showed a total of 26,000 members for the same year. Again (page 150) he explains the "fewness of the members and the small amount of business" done by the Swiss societies for distribution by the comment that they "are very far from practising co-operation according to the Rochdale

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system." M. Ernest Brelay in the *Économiste Français* has told of the *Fidélité*, of Geneva, which in 1889, with a capital of 23,649.25 francs, declared a dividend of 360 per cent to the shareholders, nearly one per cent a day — a showing which might have done credit even to the report of the twenty-first annual co-operative congress held at Ipswich. But the sound doctrine and facile logic of Dr. Pizzamiglio's answers to some questions which he propounds in Chapter V, do credit to his training in English economics. He holds (*a*) that distributive societies should never sell on credit; (*b*) that they should sell invariably at the current market price; and (*c*) that they should sell to non-members. These principles do not as yet universally obtain in Italy.

The remainder of the book is made up of short sketches of the rise and development of co-operation for distribution in other lands where the theory has found foothold. Both for original observation and for new facts, however, the section about Italy is the most valuable.

The final chapter is an intelligent discussion of the theory of the subject. The author adopts the definition of co-operation formulated by Dr. Luigi Cossa, to the effect that "co-operation is the exercise of determinate economic activities on the part of a number of persons, who assume them in order to satisfy a common need." With this I should be inclined to quarrel. While the definition brings out the fact that a co-operative association is essentially a collection of *persons*, it leaves strangely vague the element of union of the activities. Again, if we accept as true the theory that we are dealing solely with a collection of persons, while in the case of a productive society, a *Rohstoffgenossenschaft* or even a distributing society proper, there may be a contribution of "activities," yet there remains the great class of co-operative associations which have made the name of Raiffeisen famous — the loan societies, wherein the members subscribing no share capital contribute each one his individual credit, and with these united offer security for such loans as they may be able to negotiate from third persons. Here the contributions, an appeal to the activity of which would only be made in the event of determinate contingencies, seem rather to be potential than active — to be an economic force rather than an "economic activity." The following definition has been suggested as obviating these objections: "Co-operation is the composition of determinate economic forces, to satisfy in the resultant the individual needs of the contributors."

The book has not been translated with the nicest appreciation of the English idiom, and it is marred by typographical errors which fairly bristle when a foreign tongue is quoted; but altogether it is a welcome addition to that excellent Social Science Series.

FAIRFAX HARRISON.

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Die Bauernbefreiung in dem Älteren Teil Preussens. Von GEORG KNAPP. Leipzig, Duncker und Humblot, 1887.

Die Landarbeiter in Knechtschaft und Freiheit. Von GEORG KNAPP. Leipzig, Duncker und Humblot, 1890. — 92 pp.

Abhandlungen aus dem Staatswissenschaftlichen Seminar: Die Untergang des Bauernstandes in Neu-Vorpommern und Rügen (Strasburg, 1888), von KARL JOHANNES FUCHS. *Gutsherren und Bauern in Lifland* (Strasburg, 1890), von A. VON TRANSEHE-ROSENECK. *Bauer und Gutsherr in Kur-Sachsen* (Strasburg, 1892), von J. E. HAUN. *Die Bauernbefreiung in Oesterreich* (Leipzig, 1892), von C. GRÜNBERG.

Professor Knapp's recent labors in political science may perhaps be best described as a study of the evolution of the agricultural population in Germany. In the works here under review, however, he has confined himself simply to an examination of the agricultural constitution of Prussia. Applying in this smaller field his somewhat original methods of research, he has made an exhaustive examination of old land records, royal edicts, legislative enactments and the like, and has set before us a remarkably clear picture of the original condition and gradual decadence of the Prussian peasant class.

Knapp's labors in the field of economics should not, however, be judged from his writings alone. Credit is really due him for a larger work than this. During the last years he has drawn under his personal influence in the University of Strasburg a number of the younger German economists, each of whom has undertaken to investigate some one of the Germanic countries on the lines along which Knapp himself has studied Prussia. Each of these young men has had the advantage of Knapp's advice and personal supervision in his work, and already the results of this collaboration are appearing in the literature of the science. There have already been published the works whose titles are given above, and at present I understand that Dr. Wittich's work on Lower Saxony is ready for the press. In this way Knapp hopes ultimately to build up a larger composite work and to contribute thus to science an accurate history of the agricultural development of the Germanic countries. Much still remains to be done, but from Knapp's own preliminary investigations and from such of the books as have already appeared, I can perhaps give a general idea of the work now being carried on in Strasburg. In doing so, however, I will take the liberty of drawing more from Knapp's class-room lectures and seminarium talks than from his actual publications.

In mapping out the different sections of Germany for detailed investi-

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gation, Knapp found in the first place that the agricultural development of the East and of the West had been along quite divergent paths. So, as a more or less accurate line of division, he took the Stöe, the Elbe, the Saale and the Danube rivers, and laid out his plans for research accordingly. On the west of this line lay old Germany, settled originally by independent peasant householders in their village and mark communities. These householders, as time went on, came one and all under the jurisdiction and protection of the *Grundherren* or overlords, paying in return therefor certain rents in produce or services. This, however, Knapp says was a purely legal relationship, based on reciprocal rights of property. The peasants still retained their vested rights in their land as proprietors. They never were bound to the soil, nor did they ever come into any form of personal servitude to their lords. Even the old Peasant War was, according to Knapp, but a protest on the part of the peasants against the abuses which the lords had made of their rights, and it should in no way be looked upon as a revolt against the entire system of land tenures. The conditions were exactly the same as prevailed in France before the Revolution. Rents to the lords for their land and rents to the state as taxes seemed too onerous to the French peasant, so he freed himself from his feudal dues and never really compensated the lord for the loss of his legal rights. In West Germany this same separation of lord and peasant was carried through, but not till much later, in 1830–1848, and here the lords were fully indemnified.

Before entering into any account of the agricultural constitution of the eastern Germanic countries, Knapp, with his characteristic desire for clearness, is careful to remind us at the outset that this section of the country was not settled until the days of peasant military service had passed away, and the knights, with their armed retainers, had taken their places as trained soldiers in the service of the lords. Thus Knapp explains the presence of the dominant class of the East, the *Gutsherren*, or squires, who were in fact but the descendants of the knights and heirs to their estates. The margraves were originally granted huge tracts of this undeveloped Eastern land, peasant householders began to settle it and cultivate it in their village and mark communities, as in the West, and as a means of protection against attacks from the Slavs, a body of knights were also granted holdings in and among the peasantry in return for military service. So they lived at first, peasants and knights side by side, each class, however, entirely independent of the other. But by degrees knightly service in turn became an antiquated form of military organization, and the margraves, in their endeavors to build up firm political power on their old hereditary estates, began to rely more and more on their ever-increasing standing armies. The knights, then, being excluded from their profession as soldiers, became an idle

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and even dangerous class. The margraves, too, absorbed now in the more engrossing cares of state, were unable to attend to their original agricultural interests as before. To satisfy the demands of their peasant settlers on the one hand, and to keep the knights from lawless careers on the other, what more natural than that the margraves should turn over to their quondam soldier class the practical management of their estates?

Such was exactly the course of development which ensued, and Knapp here goes on to show how the knights, or squires, as we may better call them, gradually assumed all rights of the margraves over the peasants, and, having acquired full control, began then to oppress their new inferiors more and more by absorbing their land and reducing them to a state of personal bondage. Thus it went on in Prussia till after the Seven Years' War, when Frederick the Great, taking the cause of his peasant class to heart, instigated a reform movement. His first aim was to free his peasants from their condition of personal servitude to the squires. On his own domains, which were worked by a class of *Pächter*, or professional farmers, much in the same way as the squires worked their private estates, this was accomplished by royal edicts. In 1808 the reform movement begun by Frederick was extended in statutory form by Stein, and made to cover private estates as well as royal domains.

The peasants of Prussia were then, it is true, no longer serfs, but their onerous dues of rent and services still remained, and in return the squires gave scarcely anything. The problem then before Hardenberg was to separate peasant and squire and to place the two classes on a purely contractual basis. A national assembly was called by the king, — the first, by the way, as Knapp adds, which had ever convened in Prussia, — to consider the matter. None of the peasants, however, had a voice in this or any of the later assemblies called for the same purpose, and from beginning to end the squires held the advantage. As a result only the well-to-do peasants were able to free themselves from their feudal bonds, and that, too, at the cost of half their holdings. So the squires increased their estates in area and still retained the services of the poorer peasants to work them. Thus the reform dragged on until these poorer peasants at last joined the ranks of the malcontents of 1848 and called more loudly for release from old feudal ties. After this Manteuffel took hold and a more thorough-going reform was instituted. The government then stepped in and through its *Renten-Banken* has since been able to satisfy all demands of peasants and squires.

During all these years of abuse and reform, however, the peasants themselves were decreasing in number as a class. The wars of the time laid waste the holdings of many, and, unable afterward to build them up and still perform the heavy services required of them on the

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squires' estates, they dropped one after the other to the position of day laborers for hire. For this class the legislative reforms of Prussia gave no relief, and so they remain to-day, farm laborers on the squires' estates, an agricultural proletariat.

How to help this class is now the question. Knapp does not attempt to solve this last remnant of the agricultural labor problem; he considers his work done in showing the conditions and changes in the past — what the agricultural laborer of Prussia is and whence he came. In his class-room talks, however, Knapp draws rather a striking parallel between this decadence of the Prussian peasant class and that of the artisan class of to-day. The one he calls the labor problem of the eighteenth century, the other that of the nineteenth. Each was at first a proprietary class enjoying the fruits of their own labor, and free to come and go as they would. Farming on a large scale and the concentration of agricultural capital in the hands of the squires drove the peasant freeholder to the wall and reduced him to the condition of a serf or day laborer; so in the labor problem which confronts us to-day we find that the old free hand worker is being crushed by the weight of industrial capital and is becoming a slave to great manufacturing interests. What legislation has accomplished for the agricultural laborer, Knapp has shown us; and he only suggests now that the Prussian government might well exert itself more effectually in somewhat the same way for the benefit of its fast-increasing industrial proletariat.

Such in rough outline is the scope of the work going on in Strasburg under Knapp's supervision. It is a work which will perhaps attract but little popular attention, but it is one which is deserving of widespread scientific consideration, and which should evoke imitation in other countries.

LINDLEY MILLER KEASBEY.

Ueber die Gutsherrlich-Bäuerlichen Rechtsverhältnisse in der Mark Brandenburg vom 16 bis 18 Jahrhundert. Von DR. FR. GROSSMANN. Staats- und Socialwissenschaftliche Forschungen, herausgegeben von G. SCHMOLLER, IX, 4. Leipzig, Duncker und Humblot, 1890. — 138 pp.

"The history of the emancipation of the peasants is the history of the social question of the eighteenth century" in Europe; and since Professor Knapp of Strasburg, with this appeal to the attention of economic students, issued his substantial treatise on *The Emancipation of the Peasants, and the Origin of the Agricultural Laborers in the Older Portions of Prussia* (1887), a considerable literature has begun to grow up on the subject. The greater part of this literature, however, does

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but concern itself with the details in particular districts of the emancipating movement whereof Knapp has sketched the outlines. In the main results of Knapp's investigation, which is primarily devoted to the century and a half between 1706 and 1857, there seems to be a general and just acquiescence. Dr. Grossmann's essay does not attempt to call these in question; it is distinguished from most of the works which Knapp's book has called forth in that it is devoted to the earlier history of peasant conditions — to the more minute examination of that prior development to which Knapp, from the very nature of his task, could allot only a few introductory pages. Such an attempt was certainly needed; for, although it is possible to describe the conditions of 1700 and then the subsequent changes without raising the question as to how those conditions came into existence, it is obvious that for a wider view of the whole history of the peasant class an answer to that question is essential. Are we to regard the emancipation as the last stage in an upward movement, on the whole continuous within historical times, or are we to regard it as the restoration of an independence and freedom which had passed away during the middle ages? The answer to this question Knapp had taken in substance from an article of the jurist Korn which appeared in 1873. Korn's view may be described as an application to the peculiar conditions of Brandenburg, — conquered and colonized by the Germans in comparatively late centuries, — of the theory of the originally free peasant, the *Altfrei*, which a school of German scholars has made the corner-stone of constitutional and economic history. According to this view "peasants" and "knights" were originally in Brandenburg nothing more than "neighbors." Knapp so far departed from this position as to concede that in most cases the colonization was brought about by "knights" or nobles, who received grants of land from the prince and brought in German settlers to cultivate it. But he maintained that these nobles were not *Gutsherren*, but only *Grundherren*, a distinction difficult to put into English. It may perhaps be expressed by saying that the country was not divided into estates (such as would be called in England "manors") whereof part was cultivated by the lord and part by more or less servile tenants; but into districts in each of which almost the whole area was occupied by free peasants in a very loose and slight subordination to a superior. The creation of *Rittergüter*, or manors, was brought about by the degradation of these peasants, a process which was still going on in the fifteenth and sixteenth centuries, and reached its furthest point after the Thirty Years' War.

All this historical construction Dr. Grossmann now calls in question. He maintains that the *Rittergut* system was established during and with the colonization itself; and he adduces weighty arguments in support

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of this contention. The most striking, perhaps, is that in an agreement between the prince and his barons in 1283, — at a time when the colonization was but recently completed, — the peasants are spoken of as *subditi vasalli*, and the *vasallus*, or noble, is described as the *dominus bonorum*. How vital this correction is, and what a new color it gives to all the subsequent history, the author himself hardly realizes. For instance, he so far accepts Knapp's version of events as to concede that there was a distinct depression of the peasants from the second half of the fifteenth century onward. Whether this is shown by the "*Gesindezwangdienst*" is not clear without further explanation than is here given; Dr. Grossmann, writing for German specialists, omits much that the English reader has to guess. But certainly the legislation on the subject would seem to be not altogether unlike the English statutes of the period dealing with agricultural labor, — statutes which witness to increasing *independence* on the part of the peasant class. All the other alleged proofs are clearly inadequate. The demand of the knights in 1484, that no one should receive the peasants of another, may never have been necessary before because they had never run away. The punishment of a peasant who wrongfully sued his lord in the prince's court may be, similarly, not a new restriction, but a check upon a new attempt to secure greater independence. It is true that the lord was given the right on certain conditions to buy out a tenant; and this permission was often abused. But Dr. Grossmann points out that the lords had enjoyed this right long before the fifteenth century.

As a matter of fact, the number of peasant holdings remained unchanged down to at least 1527; and the favorable conditions of peasant life as compared with surrounding countries caused a considerable migration into the Mark. Facts which, when we begin with a roseate view of the peasants' original condition, point to a tightening of the lord's hold upon them, may very fairly, when we recognize that the manorial system was of long standing, be regarded as indicating a tendency to decay.

Dr. Grossmann more than makes up, however, for his overready acceptance of customary views on this point, by his disproof of another very generally accepted position, *viz.* that the introduction of Roman law at this period was detrimental to peasant rights. He shows that if any danger did arise from the Roman law in Brandenburg, it was only from the tendency of the lawyers influenced by it to generalize too freely. He points out that the great jurists of the sixteenth and the early part of the following century expressly recognized the proprietary rights of the tenants; as, for instance, in the dictum of Scheplitz in 1634: Dominium horum prædiorum est penes rusticos, et nobiles habent tantum dominium percipiendi; and that, so far as the supreme

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tribunal of the Mark was concerned, the action of the judiciary tended to put obstacles in the way of the removal of the peasants from their holdings.

The author gives a careful account of the various classes as they were to be found in the seventeenth century, — an account in which we can discern many curiously minute resemblances to the varieties of copyhold tenure in England; and he endeavors to show that the *Lassiten*, who make their first appearance about the beginning of the eighteenth century, were the descendants of peasants settled on lands left vacant during the Thirty Years' War. All this is very well worth reading, even by students of economic history outside of Germany, and it displays much acuteness and original research. But it is to the earlier portion of the book that I have thought it well to draw especial attention as of more far-reaching importance. It is interesting to observe that German scholars are now beginning to limit the range of the "original freeman," who once so completely monopolized the historical field. Even when they leave him his freedom, they are inclined to deprive him of the greater part of that social independence which freedom was once thought to imply.

W. J. ASHLEY.

Manuel de Statistique Pratique. Par VICTOR TURQUAND, Chef du Bureau de la Statistique Générale de France. Paris, Berger-Levrault et Cie., 1891. — 8vo, viii, 564 pp.

The government of France publishes a great variety of statistics on a great variety of subjects. The persons immediately charged with the duty of collecting or compiling the original returns are generally the petty administrative officers of the commune or the municipality, such as the secretary of the mayor, the assistant at the prefecture or subprefecture, the clerks in the hospitals, the custom-house officers, *etc.* Even the quinquennial census is decentralized in this way. The returns are then sent to Paris and edited either by the general bureau of statistics attached to the ministry of commerce or by the particular department concerned, *e.g.* the agricultural statistics by the ministry of agriculture. The primary object of this book was to serve as a manual of instruction to the numerous local officers who collect the returns, so that the schedules might be filled out intelligently and with some degree of uniformity. The object is certainly praiseworthy, for intelligence in the enumerator or compiler is the foundation of all trustworthy statistics. The superior council of statistics in France is disposed to go still further in this direction and has recently (as we learn from M. Turquand's preface) emitted the following demands or desiderata:

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(*a*) Que le ministère de l'intérieur veuille bien envoyer aux préfets des instructions, dont le projet pourrait être préparé par le conseil supérieur de statistique, et qui porteraient sur les précautions à prendre pour la rédaction correcte des statistiques demandées à leurs bureaux.

(*b*) Que tous ces travaux de statistique soient centralisés, sinon entre les mains d'un seul employé, du moins dans un même service.

(*c*) Que les employés chargés de ces travaux viennent à tour de rôle passer quelque temps à Paris pour y suivre les cours et s'initier à la pratique du métier dans les bureaux de statistique qui seront disposés à les recevoir pendant ce stage.

(*d*) Que l'attention du ministère de l'instruction publique soit appelée sur l'utilité d'introduire des notions de statistique dans le programme de l'enseignement donné aux élèves des écoles normales primaires d'instituteurs, pour les préparer aux travaux de statistique qu'ils seront plus tard chargés d'exécuter en qualité de secrétaires de mairie.

This programme may seem to be a little idealistic, especially in this country, where the superintendent of the census does not consider the ordinary civil service examination to be necessary in choosing his clerks. But it certainly emphasizes rightly the fact that what we want now of statistics is not a greater volume of publication, but more intelligent care in the collection.

M. Turquand's book is much more than a manual of instruction to French civil servants. In fact, any communal officer who mastered it would possess more scientific knowledge of statistics than most of the chiefs of statistical bureaus in this country. It is a complete *exposé* of the whole statistical service of France, historical, descriptive and philosophical. To the foreign student making use of French statistics it will prove invaluable. He will find here a compact but accurate history of statistics in France, both national and municipal. He will find a description of the actual organization of the statistical service and of the innumerable publications of the different departments. He will find the schedules in actual use and the instructions for filling them out. In short, the student is put into a position to know exactly where to look for any special statistics, and is given the necessary data to judge, so far as an outsider can judge, of the meaning and the trustworthiness of the figures. Similarly thorough manuals for other important countries would be valuable additions to the library of the student of statistics. It should also be added that M. Turquand devotes the last one hundred and fifty pages of his book to an exceedingly lucid and interesting *résumé* of the statistics of France, illustrated with numerous maps and diagrams and accompanied with international comparisons.

RICHMOND MAYO-SMITH.

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La Question des Monopoles. I. Les Poudres et Saltpêtres. Par J. A. DE SAINT-ANDRÉ. Paris, Guillaumin et C^ie^, 1890.

This work is the first of a series which will be devoted to the various state monopolies in France: later numbers will deal with tobacco, matches, telegraphs and telephones and the manufactures of Sèvres, Beauvais and Gobelin. The history of government interference in the industries considered in the present volume is divided into four parts. Under the monarchy to the period of the Revolution, control of the manufacture of explosives was absolute and the saltpetre trade was a government monopoly; during the second period, to 1819, the system of leases was adopted in many cases; and in the third period, to 1875, the saltpetre industry was opened to private enterprise, although the manufacture of explosives was still retained by the state. The great development of invention and chemical research since that time has necessitated a further limitation of the monopoly to the older forms of explosives, and licenses are now issued for making the newly discovered chemicals under strict surveillance of the government.

The result of this control, it is affirmed, has been to stifle private enterprise and invention, to deprive the extractive industries of the benefit of low prices and new explosives, to hinder the extended use of chemicals and salts as fertilizers, and withal to impede a needed decrease of taxation. There has been a small surplus from this monopoly, but it is claimed that this might be largely increased by a system of taxes and excises upon private establishments. The necessity of preventing a popular knowledge of the manufacture and use of explosives is denied; and it is maintained that the corps of experts educated by the state has not insured a uniformly good quality of the product. This body of engineers is held to be inefficient, ultra-conservative and extravagant. One of the most logical criticisms of all is that the government monopoly, being limited to a few large establishments, has put French miners at a disadvantage through the high transportation charges and through the irksome formalities which are rendered necessary for public safety.

M. de Saint-André's work seems to be comprehensive, but it is unduly extended and is filled with digressions and repetition. The criticism of the French administration is severe; but if the statements of fact are true, the system certainly merits the condemnation so freely given. There is, however, a suggestion of *laissez-faire* prejudice, although the general conclusion that in all cases the presumption should be in favor of individual as opposed to state enterprise is in accord with our American practice.

W. Z. RIPLEY.

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RECORD OF POLITICAL EVENTS.

[From May 1 to November 1, 1892.]

I. THE UNITED STATES.

I. National Affairs.

FOREIGN RELATIONS. — The generally placid condition of our relations with foreign governments has been disturbed only by some slight **commercial friction with Canada.** In a conference at Washington, June 3, between Secretary Blaine on the one side and two members of the Dominion government, assisted by the British minister, on the other, one of the topics discussed was a discrimination in Welland Canal tolls in favor of grain bound for Montreal. This discrimination was held by the United States to be in violation of the Treaty of Washington, of 1871, which secured to American citizens equal terms for the use of Canadian canals. Complaints on the subject had been made at a previous conference, and Mr. Blaine claimed to have understood that the Canadian ministers gave an informal pledge to have the discrimination abolished. The ministers, however, declared in June that they had only agreed to bring the matter before their government for consideration. Such consideration had evidently not affected the situation, for an order was issued in April continuing in force the discrimination during the season of 1892. The Canadian government claimed that the rebate on grain bound for Montreal was no discrimination against citizens of the United States, since it made no distinction between Canadian and American vessels. In a message of June 20, President Harrison submitted the whole situation to Congress and, holding that the rebate was a deliberate discrimination against the merchants of American shipping ports, suggested the appropriateness of steps "to secure the just rights of our citizens." A bill was promptly brought in empowering the President to impose tolls on Canadian business through the St. Mary's Falls Canal, which was otherwise free, whenever he should be satisfied that the vessels and cargoes of the United States were discriminated against by the Canadian government. The bill passed without opposition July 22: Protests by the Dominion government that any interference by them with toll rates before the end of the season would entail serious losses on contracts already made, were met with the declaration that the United States was not responsible for that fact, and on August 20 President Harrison issued his proclamation imposing tolls on all freight passing through the St. Mary's Falls Canal, bound for Canadian ports, the tolls to go into effect September 1 and to continue as long as the rebate on Montreal freight was allowed in the Welland Canal. — The Behring Sea **seal fisheries question** is in quiet course of settlement under the provisions

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of the arbitration treaty of last March. The first exchange of documents presenting the respective cases was made by the counsel early in September, and the counter-cases are now in preparation. — **Reciprocity agreements** were proclaimed with Guatemala May 20 and with Austria-Hungary May 26. The latter arrangement secures to the United States the tariff privileges granted to other nations by the recent commercial treaties of the Austro-Hungarian government. The latter in return secures a continuance of exemption from the retaliatory clause of the McKinley Act. — **A final settlement with Chili** in connection with the Valparaiso riots was reached in July, through the offer by Chili and the acceptance by the United States of $75,000, to be distributed among the seamen who were wounded and the families of those who were killed. — **The extradition treaty with France** recently negotiated by Minister Reid was rejected by the Senate May 11, failing to secure a two-thirds vote. — **A treaty with Chili** has been negotiated by Minister Egan, providing for the settlement of claims by citizens of one country against the government of the other, by the appointment of commissioners to take full cognizance of all such cases.

INTERNAL ADMINISTRATION. — **The resignation of Mr. Blaine** as Secretary of State was presented and accepted June 4, very unexpectedly to the general public. The curtness exhibited in both tender and acceptance seemed to confirm the rumors of strained personal relations between Mr. Blaine and President Harrison, and subsequent events in the Republican convention gave additional confirmation. — Some important questions as to the true legal situation of the Treasury **gold reserve fund** for the redemption of United States notes were called into prominence by heavy export demands for gold in the early summer and by the cramped position of the Treasury. The Secretary of the Treasury held that for redemption purposes he had authority, under the Resumption Act of 1875, to sell bonds to the amount of $200,000,000, but that the so-called reserve fund of $100,000,000 in gold, which was popularly supposed to be required by law, had no legal existence. In these views he was substantially sustained by the House Judiciary Committee, which investigated the subject. The gold in the Treasury July 9 was $111,071,251, which was so little above the customary redemption reserve that New York bankers adopted various measures to throw obstacles in the way of further exportation, and the Treasury offered several administrative inducements to attract gold. The drain finally led to the transfer in bulk of $20,000,000 in specie from San Francisco early in August. The transfer was made by special train, with extraordinary precautions for safety. — In the **Indian Bureau** the proceedings for opening up the Cherokee Outlet have made favorable progress, and late in the summer the herds of the cattle companies claiming rights there under leases from the Indians were driven off for what is probably the last time. It is deemed likely that the lands will be opened for settlement by next spring. Negotiations were begun in October for the purchase from the Kiowas and Comanches of some two million acres of their reservation. Commissioner Morgan's annual report was submitted to the Secretary of the Interior in September. It discusses among other matters the status of children born of a white father and an Indian mother, and concludes that the Roman and

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English legal principle should not be followed, but that such children should be classed as Indians. The commissioner reports a generally good effect of the allotment system upon the Indians. — The annual report of **the Utah Commission** takes a generally hopeful view of progress in that territory. Polygamy is declared to be still practised, though covertly and without the official sanction of the Mormon church. The petition of the church authorities for general amnesty to the Mormons the commission believes to be a most important document, and in view of the pledges therein solemnly made, it is recommended that the relief prayed for be granted. — The friction between **the Civil Service Commission** and the Post Office Department as to the conduct of officials at Baltimore was reported upon in June, after an investigation, by the House Civil Service Committee. The commission was sustained, and the postmaster-general was severely censured for refusing to remove the officers on the suggestion of the commission. Under date of July 27, the commission issued a proclamation calling attention to the provisions of the law in reference to political contributions from office-holders, and announcing its purpose to use every means to punish violations of those provisions. On October 11 the commission, on proof that demands had been made on postmasters in Michigan and elsewhere for services for the benefit of their party, published a notice that such services were contrary to postal regulations and need not be rendered, and that according to the civil service law no officer would be removed or otherwise prejudiced for refusing to render them. — **Appointments to office**: June 29, Secretary of State, John W. Foster, of Indiana; July 19, Associate Justice of the Supreme Court, George Shiras, of Pennsylvania; July 21, Minister to Russia, Andrew D. White, of New York; Minister to Spain, A. Loudon Snowden, of Pennsylvania; Minister to Greece, Rumania and Servia, Truxton Beale, of California; July 27, Minister to Persia, Watson R. Sperry, of Delaware.

CONGRESS. — The first session of the fifty-second Congress lasted till August 5. **Routine work** was very much delayed by various causes, and at the expiration of the fiscal year, June 30, not one of the appropriation bills had been signed by the President. The old appropriations, accordingly, were extended by joint resolution of the Houses, and further extensions had to be resorted to later. The Sundry Civil Appropriation Bill was the last to be passed, its progress being long blocked in the House by the opponents of an item which the Senate had inserted loaning the World's Columbian Exposition five million dollars. A solution of the deadlock was finally reached by throwing this item into a separate bill and cutting down the amount by a half. Much attention was attracted in the earlier stages of the discussion of this appropriation by the pressure brought to make the advance of the money conditional on the closing of the exposition on Sundays and the prohibition of the sale of intoxicating liquors on the grounds. As finally passed, the bill contained the Sunday closing condition. — **The Tariff Policy of the majority** in the House was continued by the passage of the bills putting on the free list binding twine, silver-lead ores and tin plate. None of these bills was reported from the Senate committee to which they were all referred. — The most **important legislation completed** during the session and not mentioned elsewhere in this RECORD was as follows: the Chinese

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Exclusion Act, which as a result of the disagreement between the two Houses, took finally a compromise form in which the existing laws are re-enacted for ten years, and in addition all Chinese laborers now in the country are required under heavy penalties to obtain certificates of residence from the internal revenue collectors of their districts, and the regulations to prevent unauthorized immigration of Chinese are made much more rigorous; the act granting American registry to the Inman Line's two fast steamers, *City of Paris* and *City of New York*, on condition that the company construct in the United States two other steamers of not less than 7000 tons, the newly registered vessels being subject to appropriation and use by the government as cruisers and transports on payment of fair value; the act adding the secretary of agriculture to the list of officers designated to succeed to the office of president in case of vacancy; an act prohibiting mechanics and laborers engaged on government work to work more than eight hours per day; and a number of acts to facilitate the participation of foreigners in the Columbian Exposition and in other ways to promote the success of the affair. — Of the **measures that failed to pass**, next to the Free-Coinage Bill mentioned elsewhere, the Anti-Option Bill excited most attention. The House passed what was known as the Hatch Bill, June 6. By this measure it was provided that contracts of sale for future delivery of "cotton, hops, wheat, corn, oats, rye, barley, grass seed, flaxseed, pork, lard, bacon and other edible products of swine" should be subject to a tax of five cents per pound on cotton, hops and hog products and twenty cents per bushel of grain, and further that dealers in such contracts should pay a license fee of $1000. The measure came before the Senate in a somewhat modified form, and after considerable debate was laid over at the end of July till the next session. The Farmers' Alliance was the main influence in favor of the bill, which was strongly antagonized by the Chambers of Commerce and Boards of Trade in the great commercial centres. Other bills that have been introduced but have failed to complete their career through the legislature are as follows: To exclude political influence from appointments to fourth-class post-offices; to compel the use of safety brakes and couplers on all trains on interstate railways; to give to United States courts jurisdiction over acts that violate treaties with foreign nations, when such acts are criminal under the laws of the state or territory in which they are committed. — The grand total of appropriations for the session was $507,701,380.

THE SILVER QUESTION. — A new phase of the currency problem has been developed by the arrangement for **an International Monetary Conference** with special reference to the silver situation. Having previously sounded the leading European powers on the subject, President Harrison early in May issued invitations on behalf of the United States which have been generally accepted by the foreign governments. Delegates have been named — those for the United States being Senators Allison and Jones, Representative McCreary, Mr. Henry W. Cannon and Pres. E. Benj. Andrews — and the meeting of the convention has been set for November 22 at Brussels. — The discussion of **free coinage in Congress**, which had been temporarily laid aside after the failure of the Bland Bill in March (see RECORD for June, 1892, p. 376), was renewed in connection with a bill introduced by Mr.

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Stewart in the Senate. Having been laid over by common consent till after the party conventions in June, the bill passed the Senate July 1 by a vote of 29 to 25. It was simply provided in the bill that all silver bullion brought to the mint should be coined into standard dollars, which should be legal tender, that the act of 1890 should be repealed and that all the silver bullion in the Treasury purchased with silver certificates should be coined. When reported in the House the bill, after a sharp struggle, was refused consideration July 13, by a vote of 154 to 136. The vote was determined quite as much by considerations of partisan expediency in view of the presidential campaign as by opinion on the merits of the bill.

THE FEDERAL JUDICIARY. — The supreme court, in the case of McPherson *et al. vs.* Blacker, October 17, sustained the Michigan supreme court in upholding the constitutionality of the law providing for the choice of electors for president by districts instead of by general ticket. It had been claimed that the law was in conflict with the fourteenth amendment to the constitution. — The circuit court of appeals for the district of Iowa decided October 17 that, under the Interstate Commerce Act, through rates agreed upon by two or more connecting railways need bear no relation to the local rates of either of the roads separately; so that the through rate between two places may be not only less than the sum of two local rates which cover the same distance, but also less than either of them. — The circuit court for Maryland decided June 11, in the case *In re* McAllister, that the state law prohibiting the sale of oleomargarine within the state was, so far as original packages were concerned, unconstitutional, as an interference with interstate commerce; and that removing the lid of a package for the purpose of examining its contents was not such breaking as would destroy its original character. — The circuit court for the Western District of Texas, in a group of cases touching the state railway commission established by act of April 3, 1891, decided (1) that the proceedings of the commission in classifying freights and prescribing rates were not such as to constitute due process of law and that the rates therefore were void, under the constitution of the United States; and (2) that certain provisions of the law which tend to enforce a compliance with the rates of the commission, whether they be reasonable or not, and that tend to embarrass such roads as seek to invoke the protection of the federal constitution, were unconstitutional. A temporary injunction was granted against the enforcement of the commission's rules, but the case is to be carried to the supreme court.

THE PRESIDENTIAL NOMINATIONS. — The Republican convention was held at Minneapolis, Minnesota, June 7–10. Interest centred chiefly in the efforts made by the opponents of President Harrison's renomination to concentrate support on Mr. Blaine, who, by his resignation from the cabinet a few days before the convention, was assumed to have indicated his willingness to become a candidate. On the first ballot, however, the vote stood: Harrison, 535⅙; McKinley, 182⅛; Blaine, 182; thus effecting the nomination of the President. For Vice-President, Whitelaw Reid, of New York, was nominated by acclamation. **The platform** adopted by the convention endorsed the "American doctrine of protection" and the "Republican policy of reciprocity"; demanded "the use of both gold and silver as standard money,

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with such restrictions and under such provisions, to be determined by legislation, as will secure the maintenance of the parity of values of the two metals, so that the purchasing and debt-paying power of the dollar, whether of silver, gold or paper, shall be at all times equal"; called for such laws "as will secure to every citizen, be he rich or poor, native or foreign born, white or black," the right to cast his vote and have it counted, and denounced "the continued inhuman outrages upon American citizens for political reasons in certain Southern states"; and expressed approval of the Monroe Doctrine, greater restriction of immigration, legislation to protect the life and limbs of railway employees, the extension of the free delivery of mail to the rural districts, and "all wise and legitimate efforts to lessen and prevent the evils of intemperance and promote morality." Mr. Harrison's formal letter of acceptance, dated September 5, embodied a long and elaborate argument in defence of the leading Republican doctrines and of the policy of his administration. — **The Democratic convention** met at Chicago, June 20–23. Mr. Cleveland's nomination was pretty well assured before the convention opened, though he was strongly opposed by the New York state delegation and other supporters of Senator Hill. Here again the result was decided by the first ballot, which stood: Cleveland, 616⅓; Hill, 113; Boies, 103. For Vice-President the choice, by the first ballot, fell on General Adlai E. Stevenson, of Illinois. The more important features of **the platform** were as follows: An affirmation of allegiance to the principles of Jefferson and his successors in Democratic leadership, particularly as opposed to "the tendency to centralize all power at the federal capital"; a warning against the dangers of "the policy of federal control of elections to which the Republican Party has committed itself," with an exposition of those dangers; a denunciation of "Republican protection" as a fraud, a declaration that "the government has no constitutional power to impose and collect a dollar for tax except for purposes of revenue only," and a pledge that the McKinley tariff, "the culminating atrocity of class legislation," should be repealed; an endorsement of "trade interchange on the basis of reciprocal advantages to the countries participating," coupled with a denunciation of "the sham reciprocity" of the late legislation; an attribution of the evils of trusts to the "prohibitive taxes which prevent free competition"; a denunciation of the coinage act of 1890 as "a cowardly makeshift," and a declaration for the use of both gold and silver as standard money and for the free and undiscriminating coinage of both metals, but on condition that the unit of coinage of both metals be "of equal intrinsic and exchangeable value, or be adjusted through international agreement or by such safeguards of legislation as shall insure the maintenance of the parity of the two metals and the equal power of every dollar at all times in the markets and in the payment of debts"; a recommendation that the prohibitory ten per cent tax on state-bank notes be repealed; and approval of civil service reform, restriction of immigration, and legislation for the safety of railway employees. Mr. Cleveland's letter of acceptance was published September 26. It was relatively brief and in general reiterated his previously declared views on the tariff, the currency and the civil service, with a short expression of hostility to the Federal Elections Bill. — The convention of **the People's Party** assembled at Omaha, Nebraska, July 2. Much interest was excited by

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the report that Judge Walter Q. Gresham, formerly postmaster-general and secretary of the treasury under President Arthur, was in sympathy with the People's Party and was willing to become its candidate for the presidency. On Judge Gresham's declination to accept, even if unanimously nominated, the convention turned to other candidates and on the first ballot chose General James B. Weaver, of Iowa. James G. Field, of Virginia, secured the nomination for Vice-President. The platform, after a preamble reproducing the generally pessimistic view of existing social conditions as formulated at St. Louis in February (see RECORD for June, 1892, p. 382), demanded government ownership of railroads, telegraphs and telephones, free coinage of gold and silver at the ratio of 16 to 1, a circulation of at least $50 *per capita*, a graduated income tax, postal savings banks, and the reclamation of all land owned by aliens and all held by corporations in excess of their actual needs. — The convention of **the Prohibition Party** opened at Cincinnati, June 29. Sentiment was much divided on the question of fusion with the People's Party, but the opposition to the idea prevailed. The nominations made were: for President, General John Bidwell, of California; Vice-President, Rev. J. B. Cranfill, of Texas. The platform demanded a currency issued directly by the government, without profit to corporations or private individuals; a tariff only for defence against foreign governments that bar us from their markets, and direct taxation for necessary revenue; the suppression of margins, corners and trusts and of the liquor traffic; the granting of the suffrage to women; government control of railroads and telegraphs; one day's rest in seven for everybody; the restriction of immigration; and the prohibition of alien land ownership.

THE CHOLERA. — The spread of this pestilence from the east to the west of Europe during the summer attracted considerable official attention to the possibility of its being brought to this country. A series of Treasury orders were issued during the summer, forbidding entry to merchandise and personal effects from infected countries except after specified processes of disinfection. Rags especially were regarded as dangerous, and on August 19 all rags from whatever country were required to be disinfected. Shortly afterward this order was extended to apply to the baggage and personal effects of all immigrants from European or Asiatic ports. At the end of August a passenger steamer from Hamburg reached New York with cholera aboard, and on September 1 a circular was issued from the Treasury, with the approval of the President, ordering that no vessel carrying immigrants from any foreign port should be admitted to entry at any port of the United States until after a quarantine detention of twenty days, unless such detention was forbidden by state laws. This last circular was issued by authority of a law of 1878, authorizing regulations by the national government not inconsistent with the quarantine laws of the states. When, with the arrival of other infected vessels, the danger of an epidemic was regarded as more serious, some question arose as to the power of the national authorities to exclude altogether vessels from infected ports, and in an opinion dated September 10 the attorney-general sustained the claim of such a power. No action under this opinion was taken, as the measures of the various state officials proved adequate to the emergency. The transatlantic steamers, however, discontinued for some time all steerage traffic.

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II. AFFAIRS IN THE STATES.

ELECTIONS. — Interest in the state elections during the summer and fall was mainly with reference to the possible bearing of their results on the presidential voting in November. In the Southern states, where the Farmers' Alliance is very strong, the first manifestations of the new People's Party were closely watched. A candidate of the Farmers' Alliance for governor in Alabama divided the regular Democratic vote, and at the election, August 1, the usual majority was cut down to about 10,000. In Arkansas, September 5, the People's Party secured double the vote that had been anticipated, but the Democrats carried the state by some 30,000. Florida, October 4, and Georgia, October 5, revealed but slight deviation from the ordinary Democratic majority. In Vermont, September 7, and Maine, September 12, the Republican majorities were somewhat below the normal.

GERRYMANDERING IN THE COURTS. — Suggested perhaps by President Harrison's vigorous attack on gerrymandering in his last annual message, attempts have been made in a number of states to overthrow recent apportionment acts by appeal to the judiciary. In **Michigan**, July 28, the supreme court declared unconstitutional not only the act of 1891, but also the previous apportionment in 1885, and directed the secretary of state to issue the election notices under the provisions of the next earlier act, unless before election a new law should have been passed. The court held that the formation of districts as determined by the legislature embodied flagrant violation of the constitutional provision that no county should be divided unless equitably entitled to two or more senators; for one county whose population numbered but little over the ratio of representation was divided and given two senators, while a group of nine counties, with an aggregate population some 16,000 larger, was allowed but a single senator. "Equity," the court observed, "has no definition applicable to such a case." — In **New York** the act of 1892 districting the state was brought into court in a county which was so divided that a city containing 129,355 inhabitants and two rural districts having about 26,000 each were given each one representative. The law was in first instance decided unconstitutional, as violating, among others, the provisions that "each senate district shall contain as nearly as may be an equal number of inhabitants," and assemblymen shall be apportioned among the counties "as nearly as may be according to the number of their respective inhabitants." This decision was sustained by the supreme court, but was ultimately reversed by the court of appeals, October 13, and the law declared constitutional. The grounds on which this final decision was based, so far as the inequality of population in the districts was concerned, were somewhat as follows: The act of 1892 was less unequal than its predecessors; equality of numbers in bodies represented has not always been the leading idea in republican institutions; the power of apportionment is a political power, is confided by the people to the legislature, and thus carries to the legislature a measure of discretion as to the manner of its exercise, with which the courts cannot interfere unless it is grossly abused; the inequalities complained of are not such as the court feels justified in regarding as in excess of the legislature's constitutional discretion. — In **Indiana** a county court

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decided, September 19, that the apportionment acts of 1891 and 1885 were both unconstitutional, because of inequality in district populations. The case has been appealed to the supreme court, whose decision, if rendered before the date set for the election in November, was expected to have much influence on the result, if it did not render any election impossible. — The supreme court of **Wisconsin** decided, October 7, against the constitutionality of the last apportionment in that state. The grounds were in general the same as those in Michigan, namely, that the court had jurisdiction over the subject, and that the discretion of the legislature as to inequality in the districts was subject to constitutional limitations which must be judicially interpreted. A special session of the legislature, called by the governor after this decision, passed an act in time for the November elections.

THE TRUSTS. — The principal incidents under this head have been the attempts to enforce the national act recently enacted for the suppression of such combinations of capital. The proceedings against the officers of the **Whiskey Trust** noticed in the last RECORD have thus far proved altogether futile. On May 13 the United States district court at Boston quashed the indictment as defective, and on June 28 the district court at New York released on a writ of *habeas corpus* an officer of the trust who had been arrested in a further effort to enforce the law. In the middle of October the district court at St. Paul, Minnesota, threw out as "too indefinite and uncertain" an indictment of the officers of the Mississippi Valley **Lumbermen's Association**. The charge in this case was that the accused had illegally combined to raise the price of lumber. — **The anthracite coal combination** noticed in the last RECORD received a set-back by a decision of the chancellor of New Jersey, August 25, declaring illegal the railroad leases by which the combination was effected and granting a preliminary injunction against the operation of the roads under their terms. The court assumed jurisdiction of the case on the ground of the question of public policy involved in the monopoly of the coal traffic. Little practical effect of the decision was manifested; for the managers of the various roads which were forbidden a common management worked nevertheless in perfect harmony.

LABOR TROUBLES. — Difficulties of a serious nature between employers and employees were unusually conspicuous during the summer. The most startling in its incidents occurred among **the steel workers at Homestead**, Pennsylvania, where one of the great plants of the Carnegie Steel Company is located. On the final refusal, after long negotiations, of the workingmen's association to accept certain proposed modifications in the scale of wages, the company declined further recognition of the association and on July 1 discharged its men and closed the works. The association, in the meantime, had ordered a general strike. The workmen, who, with their families, constituted practically the entire population of the town of Homestead, organized an advisory committee, under whose direction the picketing of the works against non-union men and all the other operations of the strike were carried on. An attempt of the sheriff, on the demand of the company for the protection of its works, to install deputies in possession was thwarted by a mob, who drove the deputies out of town. On the morning of July 6 a body of 300 watchmen, supplied by the Pinkerton Detective Agency, was despatched

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by boat to take charge of the works. At the news of their approach the strikers, thoroughly armed, broke into the works, met the boats at the landing and engaged in a conflict which lasted till late in the afternoon, with many casualties on both sides, and ended in the surrender of the Pinkerton men. Several days of futile efforts to restore the legal order through the sheriff ensued, and finally on the 10th the governor of the state called out the militia and sent a large force to Homestead. No resistance was offered to the troops, who took possession of the works and practically of the town. Some attempts of the strikers to assert themselves in their capacity as citizens and officials of the town were rather rudely suppressed. Under the protection of the military, non-union workmen were introduced into the works, and during the latter part of July most of the different mills resumed operation. During August and September the troops were gradually withdrawn, though the strike has not yet been formally abandoned. Vindication of the law has been undertaken in various ways. A number of the strikers were in July arrested on the charge of murder, as were also several of the Carnegie Company's officials and a number of the Pinkerton men. On September 30 a warrant was issued for the arrest of every member of the workmen's advisory committee on the charge of treason against the state. Indictments were found in October against all those under arrest. Chief Justice Paxson charged the grand jury of the district that the actions of the strikers might be brought within the constitutional definition of treason. A sensational side incident of the trouble was the attempted assassination, July 23, of Mr. Frick, chairman of the Carnegie Company. The assailant, who failed to inflict fatal wounds, proved to be a foreign anarchist, having no relations whatever with the strikers. — Shortly after the fighting at Homestead a similar situation was developed among **the miners in Idaho**. A long-standing dispute between mining companies and their organized employees in the Cœur d'Alene district had resulted some months before in a lockout of the latter and the employment of non-union men. On July 11 the union men attacked their rivals in a number of mines with rifles and dynamite, and drove them from the district. Considerable property was destroyed and many lives lost in the struggle. On the notification of the governor that the state militia were inadequate to the emergency, President Harrison ordered a large body of United States troops to the scene of the disturbance, and by the 14th the victorious union men were dispersed and possession of the mines restored to their owners. — In August occurred a renewal of the resistance to convict labor on the part of **the miners in Tennessee**. The conflict noticed in this RECORD for December, 1891 (p. 771), was settled by the re-establishment of the convicts at the mines, under protection of two military posts in the disturbed region. On August 13 a band of free miners at Tracy City burned the convict stockade in that neighborhood, and sent its occupants by rail to Nashville. Similar action followed in a number of other localities, including Oliver Springs, where one detachment of soldiers was located, the small number of troops availing nothing against the great and growing numbers of the mob. At Coal Creek, where the other military force was strongly posted, a vigorous attack by the miners failed to carry the position, which was then put under siege, August 18. Meanwhile large forces of militia and volunteers

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had been set in motion toward the seat of war by the authorities. After some loss of life in skirmishes between the approaching detachments and the miners, the relief of the garrison was effected, and vigorous proceedings against the disaffected elements reduced the region to order. The mining corporation offered to give up its lease of the convicts, but after some consultation with the state authorities, who have no sufficient accommodations for the prisoners in the regular prisons, the old system was again set in operation, under stronger military protection. — New York State contributed its item to the list of labor troubles in the strike of **railway switchmen at Buffalo** in the middle of August. A futile demand for an advance of wages by the Lehigh Valley switchmen was followed by a strike on that road, accompanied shortly after by a sympathetic strike on the dozen other roads centering at Buffalo. The spirit manifested by the strikers necessitated stringent measures for the protection of property in the great railway yards, and for this purpose the sheriff's powers soon proved inadequate. Accordingly some 8000 of the state troops were called out and put on guard duty about the place. Under their protection the despatch of trains was gradually resumed, with non-union men at the switches; and after the refusal of the firemen's, conductors' and trainmen's unions to call out their men, the strike was on August 24 formally abandoned.

II. FOREIGN NATIONS.

INTERNATIONAL RELATIONS. — Premier Stambouloff's energy has kept **the Bulgarian question** well to the front in general attention. The Turkish government was prodded on to the conviction and punishment of two men for the murder of Dr. Vulkovitch, and at Sofia the trial of the murderers of M. Beltscheff (see RECORD for June, 1891, p. 399) was utilized to turn public opinion against Russia. Some eighteen persons were tried in this last case, of whom four were sentenced to death, and a number of the others to imprisonment. Most important, however, was the disclosure of evidence, both oral and documentary, implicating high Russian officials in a conspiracy to murder Prince Ferdinand and M. Stambouloff. In August a series of papers, purporting to be copies of stolen Russian despatches, were published in the government's organ at Sofia, containing negotiations between the Russian secret service officers and certain Bulgarian conspirators in reference to the equipment of the latter for their operations against the life and authority of Prince Ferdinand. The Russian government promptly declared, in a circular note to the powers, that the documents were forgeries, but the press in all the principal countries except France seems disposed to regard them as authentic. M. Stambouloff's policy of conciliating the Porte achieved an apparently marked triumph in the middle of August, when he was received at Constantinople as the Sultan's guest and treated with much honor. This incident called forth a vigorous protest from M. Shishkin, who, in the illness of Giers, is at the head of the Russian foreign office, warning the Porte that his attitude toward the Bulgarian premier "had the appearance of wishing to consecrate indirectly the existence of the régime now unfortunately obtaining at Sofia and to perpetuate thereby . . . an order of things which is

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universally recognized as a permanent danger for the security and peace of Europe." At the same time M. Stambouloff was charged with having caused the execution of M. Beltscheff's alleged murderers without sufficient evidence of their guilt. — The friction of **British and Russian interests in central Asia** has again risen into prominence, this time through the medium of Afghanistan. Some tension has existed in the relations of the Ameer with the Indian administration, due to disputed boundary questions, and the settlement of the difficulties has been rendered impossible by extensive insurrections among his subjects which have absorbed the Ameer's attention. Whether timed with reference to this situation or not, a Russian expedition under Colonel Yanoff proceeded during the summer to explore thoroughly the Pamir region. The expedition was said at first to be purely geographical and scientific, but its military strength was considerable, and when it encountered, in midsummer, an Afghan outpost, on territory claimed by the Ameer, the Afghans were after a sharp fight put to flight. British interest was at once seriously enlisted in this matter, since Great Britain is under treaty obligations to maintain the integrity of the Afghan territory. A commission has been determined upon to settle the uncertainties of the boundaries in the region, and the latest news as to the disposition of the Russian forces for the winter seems to indicate a purpose to secure the most advantageous *status* from which to discuss delimitation. The Russian claims would bring her boundary south of the Hindoo Koosh and in close proximity to the British province of Cashmere. The Chinese government has protested against the Russian advance in the Pamirs, but it is not considered that Chinese interests are sufficiently important there to exert much influence in the settlement. A little competition between Russia and England for influence in Persia was decided in May in favor of the latter. The Shah, after agreeing to pay an indemnity to the company whose tobacco monopoly he had been forced to revoke (*cf.* last RECORD, p. 395), declared that his treasury was empty and that he could not pay. Russia offered him a loan on security of the Persian custom receipts, and the Shah seemed disposed to accept; but British influence was finally successful in persuading him to raise the loan in London. — The readjustment of **commercial relations** among European governments continued during the summer. On June 1 a *modus vivendi* was put in operation between France and Spain, securing to each the benefit of the other's minimum schedule pending negotiations for a permanent arrangement. During July Switzerland concluded conventions with both these nations, which have not yet been ratified. In the matter of negotiations between Germany and Russia, a German commission has recommended as a basis for discussion a reduction of duties on Russian grain and timber in return for concessions on German manufactures of iron and steel. It is reported that Russia demands the revocation of the decree forbidding the imperial Bank to take Russian loans, but that Germany is indisposed to agree to this. — An interruption of diplomatic relations between **Greece and Rumania** resulted in October from a dispute that developed during the summer. A wealthy Greek merchant residing in Rumania bequeathed his fortune for the promotion of agriculture and manufactures in Greece. The Rumanian government seized the property on the ground that by law real estate (which

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constituted the bulk of the fortune) could not be disposed of by foreigners. After negotiations for a compromise had failed the Greek government withdrew its minister from Bucharest and appealed in a circular note to the powers. — The circles which seek to draw profound conclusions from the **social courtesies of monarchs** were interested in a visit of the Czar to the German Emperor at Kiel, June 7. Whatever weight this seemed to give to the idea of a political *rapprochement* of the two empires was considered to have been neutralized by a visit on the same day paid by the Grand Duke Constantine to President Carnot, who was participating at Nancy in a *fête* which many influences had sought to turn into an anti-German demonstration. In the middle of October the Emperor William paid a visit to the Austrian monarch at Vienna.

GREAT BRITAIN AND IRELAND. — The work of the old Parliament was carried on in a rather perfunctory way till the dissolution. Mr. Balfour's Irish Local Government Bill passed its second reading, May 24, by the unexpectedly large majority of 339 to 247, but no attempt was made to complete the process of enactment into law. The Small Agricultural Holdings Bill was carried through, passing its third reading in the Commons May 27. Like success attended the Irish Education Bill. This measure was designed to confer on Ireland advantages equivalent to those secured to England by the Free Education Act of the previous session (see RECORD for December, 1891, p. 774), and at the same time to introduce to some extent the compulsory system. An annual grant of £210,000 was proposed, by which school fees of less than six shillings per head should be abolished. The only important opposition to the bill came in connection with the demand of certain Catholic schools for recognition and participation in the grant, and after some concessions by the government on this point, the bill became law. — Parliament was dissolved June 28 and **the general election** took place during July. The manifestoes of the leaders were issued in June. Lord Salisbury's, after dwelling briefly on the important internal legislation, especially for the benefit of the working class, which had been achieved under his ministry, devoted most of his address to the Irish question, representing the question of home rule as the most vital issue and submitting a vigorous argument against turning over the loyal minority in Ireland to the tyranny of the disloyal majority. Mr. Gladstone, also, in his address set forth home rule as "the question of all questions"; but he devoted much attention to "the great question of labor," denouncing as unsatisfactory the policy of the Conservatives in this respect, and suggesting various reforms likely to give additional political power to the working classes. The voting began July 4 and ended July 26, and the net result was a Parliamentary majority of forty for Mr. Gladstone, instead of the hundred which he had confidently expected. The number of members secured by the various parties was as follows: Gladstonian Liberals, 270; Conservatives, 268; Liberal-Unionists, 47; Labor Party, 4; McCarthyite Nationalists, 72; Parnellite Nationalists, 9. The net gains and losses of the various parties as compared with their strength at the dissolution were as follows: Gladstonian Liberals, gain, 54; Conservatives, loss, 36; Liberal Unionists, loss, 17; Irish Nationalists, loss, 5. As between the two factions of Irish Nationalists, the McCar-

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thyites gained 17, while the Parnellites lost 22. — **The new Parliament** assembled August 4. Lord Salisbury having resolved to force a vote of censure before resigning, a colorless address from the throne was presented, merely expressing the hope that the useful and beneficent legislation of the previous session would be followed up. After a few days' debate the Liberal amendment declaring want of confidence in the government was carried August 11, by a vote of 350 to 310. On the following day Mr. Gladstone was commanded by the Queen to form a ministry and the official announcement of **the new cabinet** was made on the 16th. The members were mostly men who were in Mr. Gladstone's last ministry. The more important names were as follows: Lord Privy Seal and First Lord of the Treasury, Mr. Gladstone; Foreign Secretary, Earl Rosebery; Chancellor of the Exchequer, Sir William Vernon-Harcourt; Home Secretary, James Asquith; Chief Secretary for Ireland, John Morley; Attorney-General, Sir Charles Russell; Secretary for Scotland, Sir George O. Trevelyan; Chancellor of the Duchy of Lancaster, James Bryce. On August 18, Parliament was prorogued till November 4. — **The Irish policy of the new government** occupied attention from the outset. Lord Houghton succeeded the Earl of Zetland as lord lieutenant. The new government promptly relieved from the operation of the Crimes Act the few districts where it still remained in force. The question then arose as to the position of the tenants who had been evicted during the struggle over the Plan of Campaign. Meetings of these tenants were held in various parts of Ireland and pressure was brought on the government for a fall session of Parliament to deal with the matter. Mr. Morley, in a letter of September 26 to Justin McCarthy, announced the resolution of the government to appoint a commission to examine and report on the question in all its aspects, — the number of estates where disputes still exist between landlords and tenants, the number and causes of evictions, the number and grounds of reinstatement, the cost of evictions to the Treasury, *etc.*, — with recommendations as to the means for settling the difficulty. The commission was appointed October 14. There has been an apparent increase in the number of evictions since the new government assumed power. This is attributed by the ministerialists to the desire of the landlords to discredit the government by fresh disorder, while the Conservatives point to it as a manifestation of the disposition of the Irish to presume on the support of the government in refusing to pay rents. Another demand pressed upon the ministry is that for the release of the Irish agitators — Fenians and dynamiters — who are now serving out sentences in British prisons. The Radicals are demanding as their reward for aiding the Liberals the removal of the prohibition against workingmen's mass-meetings in Trafalgar Square, London. — Mr. Gladstone's small majority was reduced to 38 by the loss of a seat in a bye-election in October.

THE BRITISH COLONIES. — The Canadian Parliament was prorogued July 9, the most significant part of the governor-general's speech being an announcement that prospects were good for a permanent removal of the recurring **friction between Canada and Newfoundland**. The tariff war between the two countries noticed in the last RECORD was ended by a *modus vivendi* in May, and the governor-general's statement was regarded as pointing to a commercial treaty, and possibly even to the entrance of New-

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foundland into the Dominion. — **The Manitoba school question** came into prominence again by the decision of the British Privy Council in the latter part of July reversing the decision of the Supreme Court of the Dominion and sustaining that of the Manitoba court, by which the withdrawal of government support from the Catholic separate schools was declared constitutional. An attempt of the Manitoba ministry to give certain aid to these schools led to the overthrow of the cabinet August 25. It is now understood that the Dominion government will devote a portion of the public lands in Manitoba to the maintenance of the Catholic schools, and thus remove the matter from local controversy. Such a settlement is said to be at the basis of a readjustment of the Dominion cabinet, by which Prime Minister Abbot is to retire in favor of Sir John Thompson, the latter being a Catholic. — The bill respecting **the Newfoundland fisheries** on the French shore, as agreed to by the Newfoundland delegates in consultation with the foreign office at London, was rejected in May by the legislature at St. John's, despite the government's urgent appeals for its adoption. The essence of the project was to put in the hands of commissioners appointed by the Queen exclusive jurisdiction over matters concerning the treaties. Negotiations with France on the general subject are still in progress. — A dearth of laborers for the sugar plantations, due in some measure to recent legislation to keep out the Chinese, brought about in the spring a renewal of the **importation of Polynesian natives into Queensland**. The rules regulating the traffic were promulgated in May. Only British subjects are allowed to engage in the business, and every vessel must be accompanied by a government agent, who must be present at the engagement of every native. Firearms or intoxicating liquors are not to be supplied to the islanders; the ships engaged in the trade are to have specified equipments for the comfort and safety of the laborers, who are to be returned at the expiration of their engagement to the place from which they come. Other regulations of this kind were deemed necessary to guard against practices suggestive of the slave trade. With all the restrictions, a strong sentiment against the traffic was manifested in both England and the colonies, and the Queensland government could only urge in its favor the hopelessness of any development of the country without it. — The question of a **responsible government for Natal** was under hot discussion in that colony during the summer. A bill was framed, with the approval of the home government, embodying a form of ministerial organization, but retaining in the control of the home authorities all matters touching the native population, which is ten times as numerous as the colonists. An election in the colony about the first of October, in which the question of this constitution was an issue, resulted in a victory for its adversaries.

GERMANY. — The session of **the Prussian Landtag** lasted until June 23, no measures of striking importance having been considered after the failure of the Primary Education Bill. The disturbance in party grouping which resulted from the latter measure was only fairly settled late in the summer, when the formation of a new "cartel" alliance of Centrists and Conservatives in support of the government was learned to be a definite fact. — Attention during the late summer was centered in the projects of the government for measures to be laid before the legislative bodies in the fall

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and winter. Herr Miquel's new scheme of taxation for Prussia caused the resignation, August 9, of Herr Herrfurth, Minister of the Interior, whose portfolio was assumed by Count von Eulenburg, President of the Ministry. In imperial politics a proposition for an **increase of the army** has been the centre of discussion. It was understood that the government intended to couple the demand for more men with a proposition to reduce the term of service from three to two years. On August 17, however, the Emperor in a public address declared that he preferred a smaller army with the longer term to the larger army with the shorter term; and it was then believed that no change in the term would be proposed. As made public in October, the project was found to provide in respect to the infantry for a normal two-years' service which under certain circumstances might be prolonged to three. The problem of ways and means for covering the additional expense of over sixty millions involved in the new law has also been much debated. An increase of the tax on tobacco is one of the suggestions on this point. — During the early summer the **proceedings of Prince Bismarck** took the first place in public attention. The Prince journeyed to Vienna to attend the wedding of his son, Count Herbert, to an Austrian countess, June 21. He was greeted with the usual popular demonstrations both in Germany and Austria, but was denied a reception by the Emperor Francis Joseph. Attributing this slight to the German government, Bismarck, in an interview with an Austrian journalist, began a series of very bitter attacks on the Emperor William and Count von Caprivi, and on the whole policy of the administration, both domestic and foreign. In the course of his attacks he made use of his knowledge of state secrets to an extent that it was said would have put a man in prison under his administration. That the government was touched was manifest from a number of articles in the *North German Gazette*, the organ of Count von Caprivi, some of which seemed to threaten prosecution. These governmental replies defended the administration by official documents from the archives and took the offensive against the Prince with weapons from the same arsenal. On July 7 the government published documents defining its position in the matter. The first was a rescript, dated May 23, 1890, informing imperial and royal ministers abroad that the Emperor distinguished the Prince Bismarck of former times from the Prince of to-day, and directing them to assure the governments to which they were accredited that no weight was to be put on the Prince's present views, as expressed through the journals of the day. The second was a despatch to the German minister at Vienna, dated June 9, 1892, in which the minister is notified that reports as to a *rapprochement* between the Emperor and Bismarck have no foundation, and is instructed to have nothing to do with the wedding. Bismarck's charge that the government was responsible for the refusal of Francis Joseph to receive him was thus sustained, and this fact became a topic for renewed public declamation by the Prince. No further notice of the matter was taken by the government.

AUSTRIA-HUNGARY. — The chief topic of interest in this monarchy has been the enactment of the measures for carrying out the **currency reform** noted in the last RECORD. The government's bills on the subject were introduced in the legislatures at both Vienna and Buda-Pesth during the middle

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of May and were finally passed, with little opposition, in the latter part of July. A number of bills were required to cover the necessary ground. The fundamental enactment is that providing for a gold coinage, the unit of which is the crown, 3280 crowns containing one kilogram of fine gold. The existing silver coinage of Austria is retained, and also, for the present, the paper currency, and part of the legislation is devoted to regulating the ratios of the old circulation to the new coins. A formal treaty between Austria and Hungary provides for the uniform enforcement of the gold standard in each realm. With a view to the ultimate redemption of the paper currency a four per cent loan is authorized for the purchase of gold. The metal thus procured is to be coined into crowns and stored away until some future date which shall be appointed for the resumption of specie payments. Austria must acquire gold to the sum of 183,456,000 florins, Hungary less than a third of that. The administrative proceedings for putting the new system in operation were in full headway in September and the movement of gold toward Austria was closely watched by financial circles throughout the world. — The meetings of the various **provincial diets** in September were characterized by the usual manifestations of race feeling. In Bohemia the Young Czechs renewed their demand that the Emperor should be crowned king at Prague. In Lower Austria the anti-Semites were so violent as to render legislative proceedings impossible. The Italian faction in the Tyrol, the Rumanians in Bukowina and the Ruthenians in Galicia — all resorted to more or less extreme measures in obstructing the work of the majorities. — **The Delegations** met at Buda-Pesth October 3. Both Count Kalnoky and the Emperor dwelt on the peaceful outlook for Europe, but at the same time asked larger military appropriations in view of the preparations in Russia and France. There was little opposition to the government's measures.

FRANCE. — A partial **cabinet crisis** occurred July 11 in connection with a discussion of the Dahomeyan war. A demand on the Minister of Marine, M. Godefry Cavaignac, that the command of naval and military operations in that region should be put in the hands of a single officer, was refused by the minister, but was thereupon immediately endorsed by the Chamber of Deputies, 287 to 150. The cabinet, after consultation, declined to identify itself with M. Cavaignac, whereupon the latter alone resigned and was succeeded by M. Burdeau. — The modification of relations between the **Catholic royalists and the republic** has continued to be a topic of interest in France. By a brief to the cardinals in May and by various later communications with other church dignitaries the Pope has put himself anew on record as favoring the recognition and support of the republic by the French Catholics. Considerable opposition to this idea was manifested in different quarters on the ground that the Vatican was assuming to direct political matters rather than those of faith pure and simple. Comte de Mun and the Marquis de Breteuil, two influential Catholics, and later M. de Mackau, formerly a royalist leader, came out, however, for the papal policy and did much to promote it. On the other hand some forty of the seventy Royalist deputies in the Chamber, headed by the Duc de la Rochefoucauld, agreed to a declaration in June, declining to follow the directions from the Vatican and announcing a determination to maintain the whole of their political rights. — Serious **labor**

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troubles at Carmaux developed during the summer and fall. A miner, having been elected mayor, was afterwards discharged by his employers on the ground that he was not attending to his work with them. To force his reinstatement the other miners and the glass-workers struck, and disorderly incidents became frequent. The prefect's measures for preserving order were not very thoroughly executed by the mayor, and troops had to be brought to the place in large numbers. A number of socialistic members of the Chamber of Deputies were on the spot, stimulating the workingmen. At the reassembling of the legislature, October 18, the affair at Carmaux was immediately brought up in the Chamber and after a hot debate an agreement to arbitrate was reached, with Premier Loubet, the Minister of Public Works and a socialist deputy as arbitrators. Their decision reinstated the discharged employee, with leave of absence, but refused to reinstate several of the more violent of the strikers. This solution was accepted immediately by the company, and ultimately, after some hesitation, by the workmen.

ITALY. — The cabinet reconstruction referred to in the last RECORD only postponed and did not prevent the **fall of the Rudini ministry.** The prime minister presented his financial statement May 4. He announced a deficit of 33,000,000 lire, resulting from certain extraordinary expenditures which had become necessary. This deficit he proposed to meet in the new budget by economies in the War Department, by the sale of national property, by a government monopoly of matches and by a thorough-going reform of the *personnel* of the civil service. A vote of confidence in this programme was refused on the following day by 193 to 185 and the ministry resigned. On May 15 a new cabinet was announced under the presidency of Signor Giolotti. Its programme was outlined in a general way May 26 and confidence was voted, but only by a majority of nine. The cabinet offered to resign, but the King refused to accept, and accordingly Giolotti asked for, and after a sharp struggle obtained, provisional credits for six months on the understanding that the Chamber would be dissolved. Later the ministry considerably strengthened its majority, and the session closed June 15. On October 12 a royal decree proclaimed the **dissolution of the Chamber** and appointed November 6 for the general election. At the same time the government's financial programme was published, promising a great reduction in the military estimates, economies in public works and a project for the state monopoly of mineral illuminating oils.

RUSSIA. — Cholera has added its work to that of famine in spreading social disorganization through the empire. While exact information is lacking, it seems as if the **later effects of the famine** were less serious than had been anticipated. The relief system became after long delay well organized. A ukase of June 16 removed the prohibition on the exportation of cereals, except as to rye, rye flour and bran; and these latter were relieved from restriction in the middle of August. — **A change in the Ministry of Finance** was made September 15 by the retirement of M. Vishnegradski, who had been for six years at the head of the department. The minister's retirement was due to ill health. He was succeeded by M. Witte, who, it is understood, hopes to tide over the financial difficulties by indirect taxation and by the issue of credit notes based on the stock of gold in the treasury. No

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new loan is spoken of, though it is hoped that something more may be realized from the last loan, which is now said to have been a complete failure. — The arrest of over two thousand persons in Poland about the first of June was regarded as evidence that some insurrectionary plot had been discovered, or at least was suspected, by the authorities. Some two hundred of the persons arrested were sent to Siberia.

SPAIN. — The ministry decided, June 19, to give the advantages of the minimum tariff to nearly all nations, on account of the impossibility of approving new treaties during the current session of the Cortes. — An attempt during the summer to merge the administration of the telegraphs with that of the posts led to a **strike of the telegraphers** throughout the land. The operators claimed that their positions would be far less secure under the new system. After four days of complete suspension of telegraphic communication, the government was obliged to yield. The minister of the interior resigned, the proposed innovation was abandoned and the operators resumed their work. — Some rather serious **rioting at Madrid** July 2–4 was occasioned by the inauguration of the new taxes by which the government had planned to meet the deficit in the budget. A popular demonstration, headed by marketmen, against the tax on retail dealers resulted in an encounter with the troops, in which a number of lives were lost. Minor disturbances in various parts of the kingdom were due to the same cause.

MINOR EUROPEAN STATES. — The process of **revising the Belgian constitution** has passed through the preliminary stages. On May 10 the resolution was passed designating some thirteen articles for revision and the legislature was thereupon dissolved. The elections for the constituent assembly, June 14, resulted in a reduction of the Clerical-Conservative majority from eighty-one to forty-eight on joint ballot. The constituent assembly met in July and after organizing and appointing a committee of twenty-one from each house to consider all projects for amendment, adjourned on the 28th for a recess of three months. — **A ministerial crisis in Norway** was precipitated by the refusal of the King, after long deliberation, to approve the Storthing's proposition of separate consuls for Norway. The Steen ministry thereupon resigned, June 29, and the Storthing adjourned for an indefinite time. After trying in vain to get another ministry the King in the latter part of July resorted again to Mr. Steen, with whom an agreement was reached that he should resume office and carry the strictly necessary business in the Storthing, while the consular question should be postponed for the present, and when taken up later, should be determined on the advice of Norwegian officials alone. — Exceptionally important legislation has engaged the attention of the Parliament of **the Netherlands**. A thoroughgoing reform of taxation has been effected, involving the introduction of a general property tax, the abolition of the soap tax, the lowering of the excise on salt and the increase of that on spirituous liquors. Projects of law are under consideration extending the suffrage to all Netherlanders of full age who can read and write and support a family, and making important modifications in the requirements of military service. — **Portugal** experienced another cabinet crisis in May, resulting in a reconstruction of the ministry under the same chief, Senhor Ferreira. A proposition by the foreign bondholders for

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an adjustment of their interests which would avoid the heavy scaling which had been resolved upon, was rejected by the government in June. In reply to diplomatic representations on the subject by Germany, the government regretted the scaling, but declared that it was the only alternative with total repudiation. — The final suppression of **the revolt in Yemen** was again officially announced by the Turkish authorities in September. The announcement was soon followed by reports of continued disturbance. An encounter between a Sphakiote village and the Turkish troops on the island of Candia, October 4, indicated a probable renewal of the perennial struggle in that part of the Sultan's dominions. — In the **Greek general election** of May 15, following the dissolution of the Chamber, the issue was chiefly as to the justification of the King in dismissing Delyannis (see last RECORD). The result was an overwhelming defeat for the latter. As a consequence the Constantopoulo ministry, which had been regarded as merely an *ad interim* affair, retired in June and was succeeded by a cabinet headed by Tricoupis, supported by 177 out of the 206 members of the new Chamber. — **A change of ministry in Servia** was precipitated in August by a difference between the regents and the cabinet on the filling of a vacancy in the regency and on the commercial policy of the government. The Radical Pashitch cabinet was supplanted by a Liberal ministry headed by M. Avakumowitch. As the Radicals have a large majority in the Skupshtina, a dissolution is announced for November.

AFRICA. — The situation in Morocco has not been of a reassuring character. Rebellious tribesmen in the neighborhood of Tangier have held their own against the Sultan's troops, while the presence of the latter in Tangier has proved a source of much oppression to the peaceful natives and much terror to the foreign settlement. The British Minister, Sir Charles Euan Smith, went to Fez in July for the purpose of inducing the Sultan to sign a treaty providing for the establishment of a consulate at Fez and for a number of other facilities for commercial development. Popular hostility to the foreigners put the mission for a time in considerable danger, and the Sultan, after once consenting to the treaty, ultimately refused to sign it. British authorities attribute the failure of the treaty in some measure to French intrigues at the Sultan's court. A French mission to the Sultan in October, though much better received than the English, seemed at the close of this RECORD to be undergoing experiences similar to those of the latter. — In eastern Africa interest has been centered chiefly on **affairs in Uganda**, on the shores of Victoria Nyanza. This kingdom was occupied several years ago by an expedition sent out by the British East Africa Company. Long standing difficulties between two factions of the natives, influenced in some degree by rivalries of the French Catholic and English Protestant missionaries, resulted in hard fighting in January of 1892, which was determined in favor of the Protestants by the interposition of the company's agent, Captain Lugard, with a machine gun. The incident gave rise to animated comments in the French and German press on the civilizing policy of the British, who were charged with slaughtering native converts merely because they were Catholics. The British East Africa Company announced in June that it would no longer be able to maintain its station in Uganda, since the expense was far above the

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revenue. Colonial and religious societies in England immediately began an agitation for the occupation of the land by the government directly, on the ground that the maintenance of British influence there was indispensable not only for the good of Christianity and the suppression of the slave trade, but also for the sake of commercial and political relations on the upper Nile and in the Soudan. — The Germans in East Africa experienced another serious reverse in June. A force under Baron von Bülow, in endeavoring to exterminate a troublesome tribe near Kilima-Njaro, was itself nearly annihilated. — The French expedition in **Dahomey**, consisting of a force between three and four thousand strong, has been pushing forward steadily during the summer and fall, with hard fighting, and at last accounts was near Abomey, the capital. — The southeastern development of **the Congo State** met with a reverse in July through the destruction by the Arabs of the new posts recently established on the upper Congo west of Tanganyika. The whites who were conducting the enterprise were either killed or driven from the region. On the northeast an expedition under the auspices of the Free State pushed across the continent and in September was said to have reached Wadelai, on the upper Nile, the capital of the Equatorial Province which Emin Pasha once held for Egypt. English colonial interests were seriously startled by this report, as it seemed to threaten the loss to them of this region, which is essential to their connection between Egypt and the Zanzibar coast by way of Uganda. It is rumored that M. de Brazza, who disappeared in the interior some time ago, is also seeking to occupy in the French interest some of the Soudan territory which Egypt abandoned to the Mahdi.

LATIN AMERICA. — **The insurrection in Venezuela** has ended in successful revolution. President Palacio's cause suffered many reverses during the spring, the people apparently sympathizing with the courts, which had declared him not entitled to exercise the powers of president. In the middle of June, Palacio, after several defeats of his forces near Caracas, resigned the presidency and left the country. His successor, Vice-President Pulido, continued the struggle against the "Legalists," as the insurgents were called, under Crespo, but during the first week in October the latter carried the last positions of the government troops around Caracas and secured control of that city. The Pulido government then disappeared, and Crespo assumed full powers and began the work of reorganization. The general state of the whole country is said to be most deplorable, and in the seaports the foreign warships have alone preserved any degree of order. — **In Brazil** Congress met in May and eventually decided that under the constitution Vice-President Peixotto was entitled to continue as chief executive till the end of the term for which da Fonseca was originally elected. The insurrection in Matto Grosso was taken vigorously in hand, and by the middle of June was suppressed. An attack on Italians by a mob in Sao Paulo in July was quickly followed by formal reparation, as demanded by the Italian government. Ex-President Deodoro da Fonseca died August 24. — The Congress which met at Buenos Ayres in May formally approved all the acts of President Pellegrini against the Radicals in connection with the **Argentine presidential elections**. Later the Radical prisoners were unconditionally discharged from custody. Saenz Peña was formally chosen President by the

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electors in June and was inaugurated in October. — **Chilian finances** have mainly occupied the attention of the government at Santiago. A new ministry that assumed power at the beginning of June has been hard at work carrying forward plans for the resumption of specie payments by 1895. A new loan of $9,000,000 and the sale of nitrate and other state lands are among the means proposed to realize the project. — A meeting of delegates from four of the **Central American states** was held at San Salvador in the spring, at which it was resolved once more to make an attempt at organizing a confederation. Arrangements were made to summon an assembly for the purpose for September, 1893, at which representatives of Colombia, Mexico and the United States should be invited to be present. An insurrection in Honduras broke out in May and the insurgents soon got possession of most of the seacoast. They failed to secure the capital, however, and in August the legitimate authorities won back the coast towns and drove the rebels out of the country. In Costa Rica, on the occasion of a difference between the legislature and President Rodriguez, in September, as to the desirability of religious instruction in the public schools, the President dissolved Congress, ordered new elections and meanwhile assumed dictatorial powers. As he has strong support among the clergy and the people, no disturbance of the peace has ensued. — The presidential elections in Mexico resulted in the practically unanimous choice of Porfirio Diaz for another term.

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